



**Los Angeles County
Board of Supervisors**

Gloria Molina
First District

Mark Ridley-Thomas
Second District

Zev Yaroslavsky
Third District

Don Knabe
Fourth District

Michael D. Antonovich
Fifth District

Mitchell H. Katz, M.D.
Director

Hal F. Yee, Jr., M.D., Ph.D.
Chief Medical Officer

Christina Ghaly, M.D.
Deputy Director, Strategic Planning

313 N. Figueroa Street, Suite 912
Los Angeles, CA 90012

Tel: (213)240-8101
Fax: (213) 481-0503

www.dhs.lacounty.gov

To ensure access to high-quality,
patient-centered, cost-effective health
care to Los Angeles County residents
through direct services at DHS facilities
and through collaboration with
community and university partners.



www.dhs.lacounty.gov

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

22 April 2, 2013

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

April 02, 2013

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF SOLE SOURCE AGREEMENT WITH CERNER
HEALTHCARE SOLUTIONS, INC. FOR AN OUTPATIENT PHARMACY
INFORMATION SYSTEM
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION
()
DISAPPROVE ()**

SUBJECT

Approval of a Sole Source Agreement with Cerner Healthcare Solutions, Inc. for the provision of an Outpatient Pharmacy Information System to support the Department of Health Services outpatient Central Fill Services provided by Cardinal Health Pharmacy Services, LLC.

IT IS RECOMMENDED THAT THE BOARD:

1. Authorize the Director of Health Services (Director), or his designee, to execute a Sole Source Agreement with Cerner Healthcare Solutions, Inc. (Cerner) for the provision of an Outpatient Pharmacy Information System (OPIS), commencing upon execution by the parties for an initial term of five years, with two optional one-year extension periods with a maximum Contract Sum of \$412,927 for the entire seven- year term.
2. Delegate authority to the Director, or his designee, to exercise each of the two one-year options to extend the term of the Agreement and add or change

certain terms or conditions as required by the Board of Supervisors (Board) or Chief Executive Office (CEO), subject to review and approval by County Counsel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the first recommendation will allow the Director to execute an Agreement with Cerner, substantially similar to Exhibit I, for licensing, implementation, maintenance, and support of OPIS at Department of Health Services' (DHS) outpatient pharmacies. The Board previously approved an agreement with Cardinal Health Pharmacy Services, LLC (Cardinal) on August 7, 2012 to provide a Central Fill Pharmacy and Automation System (CFPAS) to be utilized for offsite fulfillment and dispensing of medication refills to augment DHS outpatient pharmacy functions.

The Cardinal CFPAS uses the Cerner OPIS to fulfill and dispense refill prescriptions at Cardinal's local fulfillment site in Valencia, California. In order to streamline the method of accurately transferring DHS pharmacy refill prescription information in a timely manner at Cardinal fulfillment site and DHS pharmacies, DHS felt that the use of the same OPIS as Cardinal was appropriate. The Board was advised in the August 7, 2012 Board Letter that DHS would return to the Board for approval of the OPIS Agreement with Cerner.

Since Cardinal is a provider of pharmaceutical services, not information technology (IT), Cardinal partnered with Cerner to provide DHS with the same OPIS that Cardinal will use at its fulfillment site. Pursuant to a separate agreement between Cerner and Cardinal, Cardinal will pay for the implementation and licensing of the same OPIS software that Cardinal will utilize at the Valencia fulfillment site. Under this recommended Agreement, County of Los Angeles (County) will pay Cerner for maintenance and support of the OPIS software at DHS outpatient pharmacies.

Approval of the second recommendation will allow the Director to extend the term of the Agreement by exercising two optional one-year term extensions, and to add or change certain terms or conditions, as required by the Board or the CEO.

Implementation of Strategic Plan Goals

The recommended actions support Goal 1, Operational Effectiveness, of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

The maximum County obligation for maintenance and support during the seven-year term of the Agreement is \$412,927. Attachment C provides details of cost by DHS pharmacies and Fiscal Year (FY) DHS' estimated initial obligation of \$18,323 is included in the FY 2013-14 DHS Status Quo Budget Request and subsequent obligations will be requested in future fiscal years.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Pursuant to the projected schedule (Attachment D), OPIS is expected to be accepted by the County in first quarter of FY 2013-14 for DHS High Desert Multi-Service Ambulatory Care Center (HD MACC) pharmacies and the second quarter for Martin Luther King Multi-Service Ambulatory Care Center (MLK MACC) pharmacy. By the second quarter of FY 2014-15, all 18 DHS pharmacies will have implemented OPIS. Future integration of OPIS with Cerner's Electronic Health Care Record System (EHR) will be included in the funding for the EHR that the County is purchasing.

The recommended Agreement includes all of the Board's required provisions. The Agreement also contains industry standard IT provisions, including intellectual property indemnification, OPIS software performance warranties, and provisions entitling County to remedies in the event of deficient performance by Cerner, all consistent with other agreements between County and Cerner.

The CEO Risk Management Branch has reviewed and concurs with the provisions relating to insurance and indemnification, including any revisions made as a result of the negotiations. County Counsel has approved this Agreement as to form. The Chief Information Officer (CIO) concurs with the Department's recommendation and that Office's Analysis is attached (Attachment A).

The OPIS Agreement is not a Proposition A service agreement. It is the acquisition of infrastructure and automation, authorized by Health and Safety Code Sections 1445 and 1451, as well as Government Code Section 31000.

CONTRACTING PROCESS

Initially, DHS negotiated with both Cardinal and Cerner for a single agreement. However, as a result of the negotiations, it became apparent that the two agreements needed to be split-up to ensure that each contractor is fully responsible for its own area of expertise. The Board was advised, in a DHS memo dated January 23, 2012 of the Department's intent to enter into an Agreement with Cardinal for the provision of CFPAS for refilling prescriptions and a separate Agreement with Cerner for the licensing, implementation, maintenance, and support of the OPIS which will be interfaced with Cardinal's CFPAS.

A Sole Source Checklist is included with this Board Letter (Attachment B) in accordance with Board Policy 5.100, Sole Source Contracts.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

OPIS will support the goals of an outpatient central fill pharmacy system to increase patient satisfaction by reducing outpatient congestion at local DHS pharmacies and improve pharmacy access for those patients who are unable to travel because of infirmity or transportation-related issues. Utilizing Cerner's OPIS will provide high reliability that DHS outpatient refills will be available during pharmacy operating hours.

Respectfully submitted,

Handwritten signature of Mitchell H. Katz in black ink.

Mitchell H. Katz, M.D.

Director

MHK:RS:rt

Enclosures

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

Handwritten signature of Richard Sanchez in black ink, with a small "Reviewed By:" stamp above it.

RICHARD SANCHEZ

Chief Information Officer



RICHARD SANCHEZ
CHIEF INFORMATION OFFICER

Office of the CIO
CIO Analysis

ATTACHMENT A

NUMBER:

CA 13-05

DATE:

2/6/2013

SUBJECT:

APPROVAL OF SOLE SOURCE AGREEMENT WITH CERNER HEALTHCARE SOLUTIONS, INC. FOR AN OUTPATIENT PHARMACY INFORMATION SYSTEM

RECOMMENDATION:

☒ Approve

☐ Approve with Modification

☐ Disapprove

CONTRACT TYPE:

☒ New Contract

☒ Sole Source

☐ Amendment to Contract #: Enter contract #.

☐ Other: Describe contract type.

CONTRACT COMPONENTS:

☒ Software

☐ Hardware

☐ Telecommunications

☒ Professional Services

SUMMARY:

Department Executive Sponsor: Amy Gutierrez, Pharm.D., DHS Chief Pharmacy Officer

Description: Department of Health Services (DHS) is requesting authorization to: 1) execute a Sole Source Agreement with Cerner Healthcare Solutions, Inc. (Cerner) for an Outpatient Pharmacy Information System (OPIS) for an initial term of five years, with two optional one-year extension periods; and 2) obtain delegated authority to exercise each of the two one-year options to extend the Agreement and add or change certain terms or conditions as required by the Board of Supervisors or Chief Executive Officer, subject to review and approval by County Counsel.

Contract Amount: \$412,927

Funding Source: DHS Operating Budget

☐ Legislative or Regulatory Mandate

☐ Subvened/Grant Funded: Enter %

**Strategic and
Business Analysis**

PROJECT GOALS AND OBJECTIVES:

The Outpatient Pharmacy Information System (OPIS) is part of the overall Central Fill Pharmacy and Automation System (CFPAS) enterprise solution that will help medications be filled more efficiently in a high volume central refill pharmacy operated by Cardinal Health Pharmacy Services, LLC (Cardinal) for County outpatient pharmacies. The medications will be delivered back to the County pharmacy of origin or mailed (optional) to the patient's home address. Its primary goals are to assist patients by providing additional pharmacy access and service for medication, and reduce costs of processing prescriptions for the County.

BUSINESS DRIVERS:

The key business drivers for the project are:

- 1) Improve patient care and medication access through the implementation of a centralized, standardized, enterprise-wide prescription fulfillment system using Cerner Etreby in conjunction with Cardinal's central refill business processes.
- 2) Reduce the labor cost of filling a prescription by a substantial amount.

PROJECT ORGANIZATION:

Amy Gutierrez, Pharm.D., DHS Chief Pharmacy Officer, is the Project Executive Sponsor and Shane D'Souza, DHS Pharmacy Supervisor, is the Project Director. There is also an Information Technology (IT) Project Manager, Sorin Gudea, to handle the technical IT-related issues. The business and IT teams have established initial governance to deal with the contracting and technical analysis and have been working with Cerner Etreby, Cardinal and ISD technical teams to design the solution. The Cerner Eterby software system will be hosted at ISD and each pharmacy will have clients that will work with the hosted system. Cardinal's central fill pharmacy will be treated as another pharmacy location within the County pharmacy network and will interface with its own internal software system for high volume prescription fulfillment.

PERFORMANCE METRICS:

Success will be measured by three metrics:

1. Improved Customer Satisfaction - Implementing the new central fill services pharmacy outpatient information system is expected to reduce the patient waiting times and patient congestion in on-Site DHS pharmacies, thereby improving customer service. Patient satisfaction scores will be measured by customer satisfaction surveys.
2. Increased Efficiency for Dispensing of all Outpatient Medication - The central fill services dispensing model supports a more efficient means to dispense outpatient refill medication, through the ability to potentially reduce the use of contract staff in the prescription dispensing process. Processing time for prescriptions and patient wait times will be assessed. Shorter processing time translates to increased efficiency and shorter patient wait times at the pharmacy.
3. Improved Patient Access - Central fill services using the optional mail delivery services will improve patient access to refill prescriptions, especially for those who are unable to travel because of infirmity or transportation.

STRATEGIC AND BUSINESS ALIGNMENT:

The project supports the following County Strategic Plan goals: Operational Effectiveness, Fiscal Sustainability, and Integrated Services Delivery.

PROJECT APPROACH:

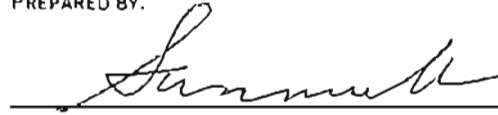
The Cardinal CFPAS uses the Cerner OPIS to fulfill and dispense refill prescriptions at Cardinal's local fulfillment Site in Valencia, California. In order to streamline the method of accurately transferring DHS pharmacy refill prescription information in a timely manner between the Cardinal fulfillment Site and DHS pharmacies, DHS felt that the use of the same OPIS as Cardinal was appropriate. The Board was advised at the August 7, 2012 Board Meeting that DHS would return to the Board for approval of the OPIS Agreement with Cerner. Since Cardinal is a provider of pharmaceutical services, not information technology, Cardinal has partnered with Cerner to provide DHS with the same OPIS that Cardinal will use at its fulfillment Site. Pursuant to a separate agreement between Cerner and Cardinal, Cardinal will pay for the implementation and licensing of the same OPIS software that Cardinal will utilize at the Valencia fulfillment Site. Under this Agreement, County will pay Cerner for maintenance and support of the OPIS software.

	<p>ALTERNATIVES ANALYZED:</p> <p>None.</p>
<i>Technical Analysis</i>	<p>ANALYSIS OF PROPOSED IT SOLUTION:</p> <p>The Cerner OPIS is an enterprise solution software that will be hosted by ISD. This will effectively replace the Pharmacy Stock Control Audit System (PSCAS), the current outpatient pharmacy system for all 18 County outpatient pharmacies. As a result, there will be a consolidation of the current local server configuration to a central enterprise server solution. The software will provide additional enhancements compared to PSCAS. Cerner OPIS also will accept electronic prescriptions when available with the anticipated electronic health record.</p> <p>PSCAS cannot efficiently transmit prescriptions to the Cardinal fulfillment Site due to the outdated software language it is built on. For example, medication standards for drugs, NDC (National Drug Code), are not used for drug identification in PSCAS. Homegrown drug mnemonics are used instead to uniquely identify medications. To remedy this roadblock, Cardinal will provide the County the same software that Cardinal will be utilizing at the fulfillment Site.</p> <p>This hosted solution will connect the current 18 outpatient County pharmacies and the Cardinal fulfillment Site under the same software. ISD will be providing the hosted environment in a virtual machine. The setup will consist of production, backup, test, reporting, and training environments. The Cerner Etreby software client will be installed on the workstations at the local County pharmacies.</p> <p>The central server at ISD will provide a central database for County outpatient pharmacies and the Cardinal fulfillment Site to access prescriptions records. This allows an efficient means of transferring a refill prescription electronically from County outpatient pharmacies to the Cardinal fulfillment Site. The Cardinal fulfillment Site will then have all the necessary information to accurately and safely fill the refill medications for the County outpatient pharmacies.</p>

Financial Analysis	<p>BUDGET:</p> <p>Contract costs</p> <p>One-time costs:</p> <p>Hardware..... \$ 0</p> <p>Software \$ 0</p> <p>Services \$ 0</p> <p>Ongoing costs for the 5+2 year term extension:</p> <p>Hardware..... \$ 0</p> <p>Software \$ 0</p> <p>Services (support) \$ 412,927 +</p> <p>Sub-total Contract Costs: \$ 412,927</p> <p>Other County costs:</p> <p>Ongoing Costs for 7 year term:</p> <p>Services (ISD)..... \$ 2,004,612 ++</p> <p>Sub-total Ongoing County Costs \$ 2,004,612</p> <p>Total one-time costs: \$ 0</p> <p>Total ongoing costs (7 Years): \$ 2,417,539</p> <p>+ Cerner Support Costs:</p> <p>Year 1 – \$18,323</p> <p>Year 2 – \$64,610</p> <p>Year 3-6 – \$69,432 (each year)</p> <p>Year 7 – \$52,266</p> <p>++ ISD Enterprise Hosting Costs:</p> <p>Year 1 – \$216,756</p> <p>Year 2 – \$277,896</p> <p>Years 3-7 – \$301,992 (each year)</p>
Risk Analysis	<p>RISK MITIGATION:</p> <ol style="list-style-type: none"> 1. The project has risks in terms of coordination of services between Cerner, Cardinal, and ISD. Proper project governance is needed between DHS business, IT, and ISD to manage the project with the vendors. 2. The Chief Information Security Officer (CISO) has reviewed the Agreement and did not identify any IT security or privacy-related issues.

CIO Approval

PREPARED BY:

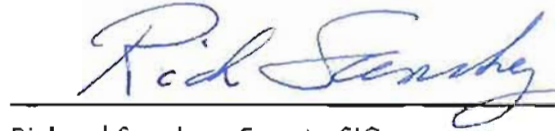


Sanmay Mukhopadhyay, Sr. Associate CIO

3/13/2013

Date

APPROVED:



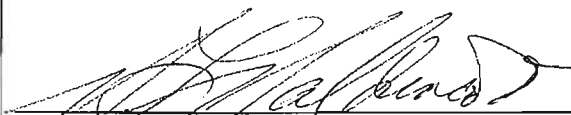
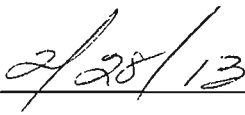
Richard Sanchez, County CIO

3-15-13

Date

Please contact the Office of the CIO (213.253.5600 or info@cio.lacounty.gov) for questions concerning this CIO Analysis. This document is also available online at <http://ciointranet.lacounty.gov/>

SOLE SOURCE CHECKLIST

Check (✓)	JUSTIFICATION FOR SOLE SOURCE CONTRACTS <i>Identify applicable justification and provide documentation for each checked item.</i>
	➤ Only one bona fide source for the service exists; performance and price competition are not available.
	➤ Quick action is required (emergency situation).
	➤ Proposals have been solicited but no satisfactory proposals were received.
	➤ Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.
	➤ Maintenance service agreements exist on equipment which must be serviced by the authorized manufacturer's service representatives.
	➤ It is more cost-effective to obtain services by exercising an option under an existing contract.
✓	<p>➤ It is in the best interest of the County, e.g., administrative cost savings, excessive learning curve for a new service provider, etc.</p> <p>On August 7, 2012, DHS entered into an agreement with Cardinal Health Pharmacy Systems, LLC (Cardinal) to provide a central fill pharmacy and automation system (CFPAS) to be utilized for off-site fulfillment and dispensing of medication refills. Since Cardinal currently uses Cerner's outpatient pharmacy information system (OPIS), by adopting the same OPIS, DHS will be able to integrate its outpatient pharmacy operations into the CFPAS much more quickly and efficiently than by choosing a different OPIS. As a result, DHS will be able to realize operational efficiencies sooner as well as provide additional services to patients earlier.</p> <p>In addition, to realize the efficiencies and lower learning curve associated with having the same OPIS, Cardinal has agreed to provide funding for the implementation and licensing for the Cerner system. Therefore, it is also more cost-effective for DHS to implement the Cerner OPIS.</p>
	➤ Other reason. Please explain:
<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div data-bbox="82 1787 649 1944">  Loreto Maldonado, Manager, CEO </div> <div data-bbox="974 1808 1487 1944">  Date </div> </div>	

**Agreement with Cerner Health solutions for an Outpatient Information System with
Maintenance and Support
Schedule of Payments for the Agreement Term**

DHS Pharmacy	Starting FY- Quarter(Q)	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	Total
HD MACC (2 sites)	2013-2014 Q1	\$ 7,715 *	\$ 7,715	\$ 7,715	\$ 7,715	\$ 7,715	\$ 7,715	\$ 5,529 **	\$ 52,095
MLK MACC, and Humphrey CHC	2013-14 Q2	\$ 5,786	\$ 7,715	\$ 7,715	\$ 7,715	\$ 7,715	\$ 7,715	\$ 5,529 **	\$ 50,166
Rancho	2013-14 Q3	\$ 1,929	\$ 3,857	\$ 3,857	\$ 3,857	\$ 3,857	\$ 3,857	\$ 2,764 **	\$ 24,119
OV-UCLA MC, Mid-Valley CHC, and San Fernando HC	2013-14 Q4	\$ 2,893	\$ 11,572	\$ 11,572	\$ 11,572	\$ 11,572	\$ 11,572	\$ 8,711 **	\$ 69,464
H-UCLA MC (3 sites), Long Beach CHC, and Wilmington HC	2014-15 Q1	N/A	\$ 19,287	\$ 19,287	\$ 19,287	\$ 19,287	\$ 19,287	\$ 14,519 **	\$ 110,952
LAC+USC MC (2 sites), Hudson CHC, Roybal CHC, and El Monte CHC	2014-15 Q2	N/A	\$ 14,465	\$ 19,287	\$ 19,287	\$ 19,287	\$ 19,287	\$ 14,519 **	\$ 106,131
Total		\$ 18,323	\$ 64,610	\$ 69,432	\$ 69,432	\$ 69,432	\$ 69,432	\$ 52,266 **	\$ 412,927

* Maintenance and Support fees are projected to begin in Fiscal Year 2013-14 Quarter 1.

**Maintenance Fees reflect \$69,432 prorated to Agreement expiration

ATTACHMENT D**PROJECT SCHEDULE FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM (OPIS)**

Below is a projected Project Schedule for Phase Acceptance of the County Pharmacies at the applicable County Facilities, broken down by Fiscal Year (FY) and Quarter (Q) for the Agreement Term from April 2, 2013 to April1, 2020.

FISCAL YEAR	COUNTY PHARMACY
FY 2013-14, Note , Agreement is effective April 2, 2013	Q1, High Desert MACC (2 sites)
FY 2013-14	Q2, MLK MACC, Q2, Humphrey CHC, Q3, Rancho, Q4, OV-UCLA MC, Q4, Mid-Valley CHC, Q4, San Fernando HC,
FY 2014-15	Q1, Harbor-UCLA MC (3 sites), Q1, Long Beach CHC, and Q1, Wilmington HC Q2, LAC+USC MC (2 sites), Q2, Hudson CHC, Q2, Roybal CHC, and Q2, El Monte CHC
FY 2015-16 to FY 2019 -20 Q4 Note , Agreement expiration is April 1, 2020	18 DHS Pharmacies Operational with Maintenance and Support



**AGREEMENT
BY AND BETWEEN
COUNTY OF LOS ANGELES
AND
CERNER HEALTHCARE SOLUTIONS, INC.
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

AGREEMENT NUMBER _____

APRIL 2013

TABLE OF CONTENTS

1.	APPLICABLE DOCUMENTS	1
1.1	INTERPRETATION	1
1.2	ENTIRE AGREEMENT	2
1.3	DEFINITIONS	2
2.	ADMINISTRATION OF AGREEMENT – COUNTY	20
2.1	COUNTY ADMINISTRATION	20
2.2	COUNTY KEY PERSONNEL	20
2.3	COUNTY PERSONNEL	21
2.4	APPROVAL OF WORK	21
3.	ADMINISTRATION OF AGREEMENT – CONTRACTOR	21
3.1	CONTRACTOR ADMINISTRATION	21
3.2	CONTRACTOR KEY PERSONNEL	21
3.3	APPROVAL OF CONTRACTOR’S STAFF	22
3.4	BACKGROUND AND SECURITY INVESTIGATIONS	22
3.5	REPORTS BY CONTRACTOR	23
3.6	RULES AND REGULATIONS	23
3.7	CONTRACTOR’S STAFF IDENTIFICATION	24
4.	CHANGES NOTICES AND AMENDMENTS	24
4.1	GENERAL	24
4.2	CHANGE NOTICES	24
4.3	AMENDMENTS	24
4.4	PROJECT SCHEDULE	25
4.5	EXTENSIONS OF TIME	25
4.6	BOARD ORDERS	25

4.7	COUNTY AFFILIATES.....	26
4.8	FACSIMILE	26
5.	SCOPE OF WORK.....	26
5.1	SYSTEM COMPONENTS.....	26
5.2	IMPLEMENTATION SERVICES.....	27
5.3	SYSTEM MAINTENANCE.....	27
5.4	OPTIONAL WORK.....	27
5.5	STANDARD OF SERVICES.....	27
5.6	UNAPPROVED WORK	27
6.	PROJECT IMPLEMENTATION.....	28
6.1	PROJECT SCHEDULE.....	28
6.2	KEY DELIVERABLES AND MILESTONES.....	28
7.	TERM	28
7.1	INITIAL TERM.....	28
7.2	EXTENDED TERM	28
7.3	DEFINITION OF TERM	29
7.4	NOTICE OF EXPIRATION	29
8.	CONTRACT SUM	29
8.1	MAXIMUM CONTRACT SUM.....	29
8.2	SYSTEM IMPLEMENTATION	29
8.3	SYSTEM MAINTENANCE.....	30
8.4	OPTIONAL WORK.....	30
8.5	NON-APPROPRIATION OF FUNDS.....	30
8.6	COUNTY’S OBLIGATION FOR FUTURE FISCAL YEARS	31
9.	INVOICES AND PAYMENTS.....	31
9.1	INVOICES	31

9.2	DELIVERY OF SYSTEM SOFTWARE	32
9.3	SALES/USE TAX	32
9.4	PAYMENTS	33
9.5	COUNTY’S RIGHT TO WITHHOLD PAYMENT	33
10.	SYSTEM OWNERSHIP AND LICENSE	33
10.1	SYSTEM OWNERSHIP	33
10.2	LICENSE	34
10.3	SOURCE CODE.....	35
11.	SYSTEM ACCEPTANCE.....	37
11.1	SYSTEM TESTS	37
11.2	PRODUCTION USE	37
11.3	PHASE ACCEPTANCE.....	37
11.4	FINAL ACCEPTANCE.....	37
11.5	FAILED TESTING	37
12.	WARRANTIES AND CORRECTION OF DEFICIENCIES	38
12.1	SYSTEM WARRANTIES	38
12.2	PROBLEM RESOLUTION.....	39
12.3	CONTINUOUS PRODUCT SUPPORT	39
12.4	WARRANTY PASS-THROUGH	40
12.5	REMEDIES	40
12.6	BREACH OF WARRANTY OBLIGATIONS.....	40
12.7	DISCLAIMER OF WARRANTIES	40
13.	INDEMNIFICATION.....	40
14.	INSURANCE AND PERFORMANCE SECURITY	40
14.1	GENERAL INSURANCE REQUIREMENTS	40
14.2	EVIDENCE OF COVERAGE AND NOTICE	41

14.3	ADDITIONAL INSURED STATUS AND SCOPE OF COVERAGE	41
14.4	INSURANCE COVERAGE.....	43
14.5	FAILURE TO MAINTAIN COVERAGE.....	44
15.	INTELLECTUAL PROPERTY WARRANTY AND INDEMNIFICATION.....	44
16.	PROPRIETARY CONSIDERATIONS	45
16.1	COUNTY MATERIALS	45
16.2	TRANSFER TO COUNTY	45
16.3	CONTRACTOR’S OBLIGATIONS.....	45
16.4	PROPRIETARY AND CONFIDENTIAL	45
17.	DISCLOSURE OF INFORMATION.....	46
18.	CONFIDENTIALITY AND SECURITY	46
18.1	CONFIDENTIALITY	46
18.2	SECURITY.....	48
18.3	REMEDIES	48
19.	PROHIBITION AGAINST ASSIGNMENT AND DELEGATION	49
20.	TERMINATION FOR DEFAULT.....	50
21.	TERMINATION FOR CONVENIENCE.....	51
22.	TERMINATION FOR IMPROPER CONSIDERATION.....	51
23.	TERMINATION FOR INSOLVENCY	51
24.	EFFECT OF TERMINATION	52
25.	INDEPENDENT CONTRACTOR STATUS	53
26.	SUBCONTRACTING	53
27.	DELIVERY AND RISK OF LOSS.....	55
28.	MOST FAVORED PUBLIC ENTITY	55
29.	RECORDS AND AUDITS.....	55
30.	COUNTY’S QUALITY ASSURANCE PLAN	56

31.	CONFLICT OF INTEREST	56
32.	COMPLIANCE WITH APPLICABLE LAWS.....	57
33.	FAIR LABOR STANDARDS.....	57
34.	COMPLIANCE WITH CIVIL RIGHTS LAWS.....	57
35.	RESTRICTIONS ON LOBBYING.....	59
	35.1 FEDERAL FUNDS PROJECTS.....	59
	35.2 LOBBYIST ORDINANCE	59
36.	EMPLOYMENT ELIGIBILITY VERIFICATION	59
37.	CONTRACT HIRING	60
	37.1 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS	60
	37.2 CONSIDERATION OF GAIN/GROW PROGRAM PARTICIPANTS FOR EMPLOYMENT	60
	37.3 PROHIBITION AGAINST INDUCEMENT AND PERSUASION.....	60
38.	FEDERAL EARNED INCOME CREDIT	60
39.	CONTRACTOR RESPONSIBILITY AND DEBARMENT	60
	39.1 RESPONSIBLE CONTRACTOR	60
	39.2 CHAPTER 2.202 OF THE COUNTY CODE	60
	39.3 NON-RESPONSIBLE CONTRACTOR	61
	39.4 CONTRACTOR HEARING BOARD	61
	39.5 SUBCONTRACTORS OF CONTRACTOR	62
40.	FEDERAL ACCESS TO RECORDS.....	62
41.	REQUIRED CERTIFICATIONS	62
42.	NO THIRD PARTY BENEFICIARIES	62
43.	CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER	62
44.	WARRANTY AGAINST CONTINGENT FEES.....	63
45.	SAFELY SURRENDERED BABY LAW	63

45.1	NOTICE	63
45.2	ACKNOWLEDGMENT OF COMMITMENT	63
46.	COMPLIANCE WITH COUNTY’S JURY SERVICE PROGRAM	63
46.1	JURY SERVICE PROGRAM.....	63
46.2	WRITTEN EMPLOYEE JURY SERVICE POLICY	63
47.	CONTRACTOR’S WARRANTY OF ADHERENCE TO COUNTY’S CHILD SUPPORT COMPLIANCE PROGRAM	64
48.	TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY’S CHILD SUPPORT COMPLIANCE PROGRAM.....	65
49.	DEFAULTED PROPERTY TAX REDUCTION PROGRAM	65
49.1	CONTRACTOR’S WARRANTY OF COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM.....	65
49.2	TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM.....	65
50.	COUNTY AUDIT SETTLEMENTS	65
51.	DISPUTE RESOLUTION PROCEDURE	65
52.	ASSIGNMENT BY COUNTY.....	66
53.	NEW TECHNOLOGY	66
54.	NON-DISCRIMINATION IN SERVICES	67
55.	UNLAWFUL SOLICITATION	67
56.	GOVERNING LAW, JURISDICTION AND VENUE	67
57.	WAIVER.....	68
58.	AUTHORIZATION WARRANTY.....	68
59.	VALIDITY AND SEVERABILITY	68
59.1	VALIDITY	68
59.2	SEVERABILITY	68
60.	NOTICES.....	68
61.	ARM’S LENGTH NEGOTIATIONS	69

62.	NON-EXCLUSIVITY	69
63.	CAPTIONS AND PARAGRAPH HEADINGS.....	69
64.	FORCE MAJEURE	69
65.	FORMS AND PROCEDURES	69
66.	DAMAGE TO COUNTY FACILITIES, BUILDINGS AND GROUNDS	69
67.	MINIMUM AGE, LANGUAGE SKILLS AND LEGAL STATUS OF CONTRACTOR PERSONNEL AT FACILITY	70
68.	NOTICE OF DELAYS	70
69.	RE-SOLICITATION OF BIDS AND PROPOSALS.....	70
70.	NO PAYMENT FOR SERVICES PROVIDED FOLLOWING EXPIRATION OR TERMINATION OF AGREEMENT	70
71.	ACCESS TO COUNTY FACILITIES	70
72.	COUNTY FACILITY OFFICE SPACE	71
73.	PHYSICAL ALTERATIONS	71
74.	STAFF PERFORMANCE WHILE UNDER THE INFLUENCE	71
75.	RECYCLED PAPER.....	71
76.	SURVIVAL	71

EXHIBITS

Exhibit A Statement of Work

Attachment A.1 System Requirements

Attachment A.2 System Architecture

Attachment A.3 Software Configuration

Attachment A.4 County Pharmacies

Attachment A.5 Change Notice Template

Attachment A.6 Acceptance Certificate

Exhibit B System Maintenance

Attachment B.1 County Remote Access Policy

Exhibit C Payment Schedule

Schedule C.1 Optional Work Schedule

Exhibit D Project Schedule

Exhibit E Administration of Agreement

Exhibit F Contractor's EEO Certification

Exhibit G Confidentiality and Assignment Agreement

Exhibit H Business Associate Agreement

Exhibit I Safely Surrendered Baby Law

Exhibit J Source Code Escrow Agreement

Exhibit K Jury Service Ordinance

This Agreement is entered into this _____ day of _____, 2013 by and between the County of Los Angeles, a political subdivision of the State of California (hereinafter “County”) and Cerner Healthcare Solutions, Inc. (hereinafter “Contractor”) (hereinafter collectively also the “parties”).

RECITALS

WHEREAS, County may contract with private businesses when certain requirements are met; and

WHEREAS, pursuant to California Health and Safety Code sections 1441 and 1445, County has established and operates, through its Department of Health Services, various County hospitals, comprehensive health centers and other health centers (hereafter collectively “County Facilities); and

WHEREAS, Contractor is in the business of providing and maintaining information systems; and

WHEREAS, County desires to engage Contractor, and Contractor has agreed, to provide license for, install and maintain the Outpatient Pharmacy Information System (OPIS) software (hereinafter “Software”) at County Facilities, including the Pilot Facility and any other County Facilities designated by County as the Additional Facilities, provided County stays within the scope limitations described in the License under the Agreement; and

WHEREAS, the cost of the License and the Implementation Services will be paid for by Cardinal Health Pharmacy Services, LLC. (hereinafter “CFS Provider) pursuant to a Cerner Software License and Support Agreement between Contractor and the CFS Provider (hereinafter “Software and Services Agreement”).

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein and for good and valuable consideration, County and Contractor agree as follows:

1. APPLICABLE DOCUMENTS

1.1 INTERPRETATION

The provisions of this document (hereinafter “Base Agreement”), along with Exhibits A, B, C, D, E, F, G, H, I, J and K including all Attachments and Schedules thereto, all attached hereto, described in this Paragraph 1.1 below and incorporated herein by reference, collectively form and throughout and hereinafter are referred to as the “Agreement”. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule or the contents or description of any task, subtask, deliverable, goods, service or other Work, or otherwise, between this Base Agreement and the Exhibits, Attachments and Schedules or between the Exhibits, Attachments and Schedules, such conflict or inconsistency shall be resolved by giving precedence first to this Base Agreement, and then to the Exhibits, Attachments and Schedules according to the following descending priority:

Exhibit A – Statement of Work

Attachment A.1	–	System Requirements
Attachment A.2	–	System Architecture
Attachment A.3	–	Software Configuration
Attachment A.4	–	County Pharmacies
Attachment A.5	–	Change Notice Template
Attachment A.6	–	Acceptance Certificate

- Exhibit B – System Maintenance
 - Attachment B.1 – County’s Remote Access Policy
- Exhibit C – Payment Schedule
 - Schedule C.1 – Optional Work Schedule
- Exhibit D – Project Schedule
- Exhibit E – Administration of Agreement
- Exhibit F – Contractor’s EEO Certification
- Exhibit G – Confidentiality and Assignment Agreement
- Exhibit H – Business Associate Agreement
- Exhibit I – Safely Surrendered Baby Law
- Exhibit J – Source Code Escrow Agreement
- Exhibit K – Jury Service Ordinance

1.2 ENTIRE AGREEMENT

This Base Agreement, together with the Recitals and all Exhibits, Attachments and Schedules (hereinafter collectively referred to as the “Agreement”), as further defined in Paragraph 1.1 (Interpretation) above, constitutes the complete and exclusive statement of understanding between the parties and supersedes all previous and contemporaneous agreements, whether written or oral, and any and all communications and negotiations between the parties relating to the subject matter of this Agreement.

1.3 DEFINITIONS

The terms and phrases in this Paragraph 1.3 in quotes and with initial letter capitalized, where applicable, whether singular or plural, shall have the particular meanings set forth below whenever such terms are used in this Agreement.

1.3.1 ACCEPTANCE

The term “Acceptance” shall mean County’s written approval of any tasks, subtasks, deliverables, goods, services or other Work, including System Tests, provided by Contractor to County pursuant to this Agreement.

1.3.2 ADDITIONAL CUSTOMIZATIONS

The term “Additional Customization(s)” shall mean configurations and any other customizations of Application Software, and related Documentation, that Contractor may provide following First Productive Use upon County’s request therefor as Software Modifications in accordance with Paragraph 5.4 (Optional Work) and Task 6 (Provide Optional Work) of Exhibit A (Statement of Work), which will update Schedule C.1 (Optional Work). Once accepted and approved by County, Additional Customizations shall become part of, and be deemed, Application Software for the purpose of this Agreement.

1.3.3 ADDITIONAL HARDWARE

The term “Additional Hardware” shall mean the hardware and other equipment, and related Documentation, that Contractor may provide as part of Additional Products in the form of Optional Work following First Productive Use upon County’s request therefor.

1.3.4 ADDITIONAL INTERFACES

The term “Additional Interface(s)” shall mean Interfaces, and related Documentation, that Contractor may provide following First Productive Use upon County’s request therefor as Software Modifications in accordance with Paragraph 5.4 (Optional Work) and Task 6 (Provide Optional Work) of Exhibit A (Statement of Work), which will update Schedule C.1 (Optional Work). Once accepted and approved by County, Additional Interfaces shall become part of, and be deemed, Application Software for the purpose of this Agreement.

1.3.5 ADDITIONAL PRODUCTS

The term “Additional Product(s)” shall mean any item of Additional Software or Additional Hardware, and related Documentation, that Contractor may provide as part of Optional Work following First Productive Use upon County’s request therefor.

1.3.6 ADDITIONAL SOFTWARE

The term “Additional Software” shall mean additional software and/or licenses, and related Documentation, that Contractor may provide following First Productive Use as part of Application Software upon County’s request therefor in accordance with Paragraph 5.4 (Optional Work) and Task 6 (Provide Optional Work) of Exhibit A (Statement of Work), which will update Schedule C.1 (Optional Work). Once accepted and approved by County, Additional Software shall become part of, and be deemed, Application Software for the purpose of this Agreement.

1.3.7 ADDITIONAL TRAINING

The term “Additional Training” shall mean the Training regarding the System, which Contractor may provide following First Productive Use upon County’s request therefor as Professional Services in accordance with Paragraph 5.4 (Optional Work) and Task 6 (Provide Optional Work) of Exhibit A (Statement of Work), which will update Schedule C.1 (Optional Work).

1.3.8 AFFILIATE PHARMACY; AFFILIATE PHARMACIES

The term “Affiliate Pharmacy(ies)”, whether singular or plural, shall mean any one or all of the pharmacies of County Affiliates for which Contractor may provide tasks, subtasks, deliverables, goods, services and other Work under this Agreement upon County’s election.

1.3.9 AMENDMENT

The term “Amendment” shall have the meaning specified in Paragraph 4 (Changes Notices and Amendments).

1.3.10 ANNUAL FEES

The term “Annual Fee(s)” shall mean and include annual Maintenance Fees to be paid by County to Contractor for System Maintenance for Maintenance Periods commencing upon Final Acceptance in accordance with the terms of this Agreement, including Exhibit C (Payment Schedule).

1.3.11 APPLICATION MODIFICATIONS

The term “Application Modification(s)” shall mean Software Modifications, Additional Software, Updates and any Replacement Products, and related Documentation, that may be provided by Contractor to County under this Agreement. Once accepted and approved by County, Application Modifications shall become part of, and be deemed, Application

Software for the purpose of this Agreement.

1.3.12 APPLICATION SOFTWARE

The term “Application Software” shall mean all Baseline Application, Applications Modifications, Interfaces and Third Party Application, and related Documentation, provided by Contractor to County as part of the System in accordance with the terms of this Agreement.

1.3.13 ARRA

The term “ARRA” shall have the meaning specified in Paragraph 18.1.3 (Compliance with Federal and State Requirements).

1.3.14 BASE AGREEMENT

The term “Base Agreement” shall have the meaning specified in Paragraph 1.1 (Interpretation) above.

1.3.15 BASELINE APPLICATION

The term “Baseline Application” shall mean Core Application and Baseline Modifications, consisting of Baseline Interfaces and Baseline Customizations, if any, and related Documentation, implemented by Contractor pursuant to this Agreement as part of the Implementation Services in order to meet the System Requirements.

1.3.16 BASELINE CUSTOMIZATIONS

The term “Baseline Customization(s)” shall mean customizations, if any, to the Core Application, and related Documentation, provided by Contractor pursuant to this Agreement as part of the Baseline Application, which shall meet some or all of the System Requirements.

1.3.17 BASELINE INTERFACES

The term “Baseline Interface(s)” shall mean Interfaces to the Core Application, and related Documentation, provided by Contractor pursuant to this Agreement as part of the Baseline Application, which shall meet some or all of the System Requirements.

1.3.18 BASELINE MODIFICATIONS

The term “Baseline Modification(s)” shall mean modifications to the Core Application including Baseline Customizations, if any, and Baseline Interfaces, and related Documentation, provided by Contractor pursuant to this Agreement as part of the Baseline Application, which shall meet some or all of the System Requirements.

1.3.19 BOARD OF SUPERVISORS; BOARD

The terms “Board of Supervisors” and “Board” shall mean County’s Board of Supervisors, which is the governing body of County.

1.3.20 BUSINESS ASSOCIATE AGREEMENT

The term “Business Associate Agreement” shall mean Contractor’s Obligations as a Business Associate under Health the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act, as further set forth in Exhibit H (Business Associate Agreement).

1.3.21 BUSINESS DAY

The term “Business Day” shall mean Monday through Friday, excluding County observed holidays, unless stated otherwise herein.

1.3.22 CENTRAL FILL PHARMACY

The term “Central Fill Pharmacy” shall mean and refer to the County Pharmacy operated by Contractor for the provision of Central Fill Services.

1.3.23 CENTRAL FILL SERVICES, CFS

The terms “Central Fill Services” and “CFS” shall mean the centralized prescription dispensing services provided by the CFS Provider pursuant to the terms of County’s agreement for Central Fill Services with the CFS Provider.

1.3.24 CFS PHARMACY

The term “CFS Pharmacy” shall mean any pharmacy operated and maintained by the CFS Provider for the provision of CFS pursuant to the terms of County’s agreement with such CFS Provider.

1.3.25 CFS PROVIDER; CARDINAL

The term “CFS Provider” shall mean the provider of Central Fill Services to County pursuant to the terms of County’s agreement with such CFS Provider, as further specified in the Recitals.

1.3.26 CFS SYSTEM

The term “CFS System” shall mean the system used by the CFS Provider for the provision of CFS pursuant to the terms of County’s agreement with such CFS Provider.

1.3.27 CHANGE NOTICE

The term “Change Notice” shall have the meaning specified in Paragraph 4 (Changes Notices and Amendments).

1.3.28 CHANGE OF CONTROL

The term “Change of Control” shall have the meaning specified in Paragraph 19.3 under Paragraph 19 (Prohibition against Assignment and Delegation).

1.3.29 CLAIMS

The term “Claims” shall mean all actual or threatened actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, petitions, liens or encumbrances brought by any person or entity (including, but not limited to, federal, state and/or local governmental entities, subcontractors, officers, employees or other agents of Contractor, any subcontractor or county) other than County or its administered districts.

1.3.30 CLIENT

The term “Client” shall mean all drivers, software, hardware and other tools provided by County as part of the System Environment in accordance with Contractor’s specifications.

1.3.31 CLIENT ENVIRONMENT

The term “Client Environment” shall mean the Client hardware, including workstations, and software provided by County as part of the System Environment in accordance with

Contractor's specifications.

1.3.32 CONFIDENTIAL INFORMATION

The term "Confidential Information" shall mean any data or information, in any format, and includes sensitive financial information, any County data and any other information otherwise deemed confidential by County or by Contractor or by applicable Federal, State or local law, as further specified in Paragraph 18 (Confidentiality and Security).

1.3.33 CONSULTING SERVICES

The term "Consulting Services" shall mean Professional Services that Contractor may provide following First Productive Use upon County's request therefor in accordance with Paragraph 5.4 (Optional Work) and Task 6 (Provide Optional Work) of Exhibit A (Statement of Work), which will update Schedule C.1 (Optional Work).

1.3.34 CONTRACT SUM

The term "Contract Sum" shall mean the total monetary amount payable by County to Contractor hereunder, as set forth in Paragraph 8.1 (Maximum Contract Sum). The Contract Sum shall not be adjusted for any costs or expenses whatsoever of Contractor.

1.3.35 CONTRACTOR; CERNER

The terms "Contractor" and "Cerner" shall mean and refer to Cerner Healthcare Solutions, Inc., as further specified in the Preamble to the Agreement.

1.3.36 CONTRACTOR KEY PERSONNEL

The term "Contractor Key Personnel" shall have the meaning specified in Paragraph 3.1 (Contractor Administration).

1.3.37 CONTRACTOR KEY STAFF

The term "Contractor Key Staff" shall have the meaning specified in Paragraph 3.3 (Approval of Contractor's Staff).

1.3.38 CONTRACTOR'S PROJECT DIRECTOR

The term "Contractor's Project Director" shall have the meaning specified in Paragraph 3.2.1 (Contractor's Project Director).

1.3.39 CONTRACTOR'S PROJECT EXECUTIVE

The term "Contractor's Project Executive" shall be the person designated as such in Section 2 (Contractor Key Personnel) of Exhibit F (Administration of Agreement), who shall be authorized to execute documents and bind Contractor under this Agreement.

1.3.40 CONTRACTOR'S PROJECT MANAGER

The term "Contractor's Project Manager" shall have the meaning specified in Paragraph 3.2.2 (Contractor's Project Manager).

1.3.41 CORE APPLICATION

The term "Core Application" shall mean software and other tools, and related Documentation, provided by Contractor pursuant to this Agreement as part of the Baseline Application, which shall meet some or all of the System Requirements.

1.3.42 COUNTY

The term “County” shall mean the County of Los Angeles, California, including its Department of Health Services.

1.3.43 COUNTY AFFILIATES

The term “County Affiliate(s)” shall mean any County Community Partner or any other affiliate or partner of County, which may be authorized by County to enjoy the benefits of this Agreement in accordance with the terms hereof upon agreement of the parties.

1.3.44 COUNTY FACILITY; COUNTY FACILITIES

The term “County Facility(ies)”, whether singular or plural, shall have the meaning specified in the Recitals to this Base Agreement.

1.3.45 COUNTY KEY PERSONNEL

The term “County Key Personnel” shall have the meaning specified in Paragraph 2.1 (County Administration).

1.3.46 COUNTY MATERIALS

The term “County Materials” shall have the meaning specified in Paragraph 16.1 (County Materials).

1.3.47 COUNTY PHARMACY; COUNTY PHARMACIES

The term “County Pharmacy(ies)”, whether singular or plural, shall mean any one or all of the County Pharmacies currently in existence or which DHS hereafter may add to its healthcare system as set forth in Attachment A.4 (County Pharmacies), for which Contractor may provide the OPIS related Work under the Agreement.

1.3.48 COUNTY SOFTWARE

The term “County Software” shall mean any software other than System Software installed and utilized by County in the System Environment.

1.3.49 COUNTY’S PROJECT DIRECTOR

The term “County’s Project Director” shall have the meaning specified in Paragraph 2.2.1 (County’s Project Director).

1.3.50 COUNTY’S PROJECT MANAGER

The term “County’s Project Manager” shall have the meaning specified in Paragraph 2.2.2 (County’s Project Manager).

1.3.51 CUSTOMIZATIONS

The term “Customization(s)” shall mean the customizations, if any, to the Application Software, including Baseline Customizations and Additional Customizations, and related Documentation, which may be provided by Contractor during the term of the Agreement upon County’s election in order for the System to meet any or all of the System Requirements.

1.3.52 DAY

The term “Day” shall mean calendar day and not Business Day, unless otherwise indicated.

1.3.53 DAYS OF OPERATION

The term “Days of Operation” shall mean 365/366 days per year, as further specified in Exhibit B (System Maintenance).

1.3.54 DEFICIENCY; DEFICIENCIES

The terms “Deficiency” and “Deficiencies”, whether singular or plural, shall mean any of the following: any malfunction, error or defect in the design, development, implementation, materials, and/or workmanship; any failure of the Software to meet or comply with or deviation from System Requirements, Specifications, County approved deliverables, any published and/or mutually agreed upon standards or any other representations or warranties by Contractor under the Agreement regarding the Software; and/or any other problem which results in the System, or any component thereof, not performing in compliance with the provisions of this Agreement, including but not limited to the Specifications and System Requirements.

1.3.55 DEFICIENCY CREDITS

The term “Deficiency Credit(s)” shall mean credits or any other form of discount to be applied to the applicable Maintenance Fees for Contractor’s failure to timely correct Deficiencies as specified in Exhibit B (System Maintenance).

1.3.56 DELIVERABLE; DELIVERABLE

The terms “Deliverable” and “deliverable” shall mean items and/or services provided or to be provided by Contractor under this Agreement, including numbered Deliverable(s) in Exhibit A (Statement of Work).

1.3.57 DEPARTMENT; DHS

The terms “Department” and “DHS” shall mean County’s Department of Health Services.

1.3.58 DIRECTOR

The term “Director” shall mean the Director of DHS, including any designee.

1.3.59 DISABLING DEVICE

The term “Disabling Device” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit B (System Maintenance).

1.3.60 DISASTER

The term “Disaster” shall mean a catastrophic event that results in significant or potentially significant Downtime or disruption of the Production Environment and requires Contractor to invoke the Disaster Recovery Plan, as further specified in Exhibit B (System Maintenance).

1.3.61 DISASTER RECOVERY

The term “Disaster Recovery” shall mean and refer to Contractor’s obligations to restore and maintain the System in the event of a Disaster, as further specified in Exhibit B (System Maintenance).

1.3.62 DISASTER RECOVERY PLAN

The term “Disaster Recovery Plan” shall mean the formal plan to be provided by Contractor for Disaster Recovery, as further specified in Exhibit B (System Maintenance).

1.3.63 DISPUTE RESOLUTION PROCEDURE

The term “Dispute Resolution Procedure” shall mean and refer to the provisions of Paragraph 51 (Dispute Resolution Procedure) describing the procedure for resolving the disputes arising under or with respect to this Agreement.

1.3.64 DOCUMENTATION

The term “Documentation” shall mean any and all written and electronic materials provided or made available by Contractor under this Agreement, including, but not limited to, documentation relating to software specifications and functions, training course materials, Specifications including System Requirements, technical manuals, handbooks, flow charts, technical information, reference materials, user manuals, operating manuals, quick reference guides, FAQs, and all other instructions and reference materials relating to the capabilities, operation, installation and use of the System and/or applicable components.

1.3.65 DOWNTIME

The term “Downtime” shall mean the time during which the System or any component thereof is unavailable, including Unscheduled Downtime and Scheduled Downtime, as further specified in Exhibit B (System Maintenance).

1.3.66 DUE DATE

The term “Due Date” shall mean the due date for the completion of any Deliverable in the Project Schedule.

1.3.67 EFFECTIVE DATE

The term “Effective Date” shall mean the date of execution of this Agreement by County and the authorized representative(s) of Contractor.

1.3.68 EXISTING APPLICATION

The term “Existing Application” shall mean the outpatient pharmacy application software residing and operating as of the Effective Date at the applicable County Pharmacies listed in Attachment A.4 (County Pharmacies).

1.3.69 EXISTING DATA

The term “Existing Data” shall mean the data of any of County’s Existing Data that may be required by County to be migrated and/or converted by Contractor as part of Implementation Services in accordance with Exhibit A (Statement of Work).

1.3.70 EXISTING INTERFACES

The term “Existing Interface(s)” shall mean any Interfaces that Contractor may provide to the Existing Application upon County’s request pursuant to the Agreement.

1.3.71 EXISTING SOFTWARE

The term “Existing Software” shall mean the outpatient pharmacy application software, including Existing Application and Existing Interfaces, residing and operating as of the Effective Date at the applicable County Pharmacies listed in Attachment A.4 (County Pharmacies).

1.3.72 EXTENDED TERM

As used herein, the term “Extended Term” shall have the meaning specified in Paragraph 7.2

(Extended Term).

1.3.73 FACILITY PROJECT MANAGER

The term “Facility Project Manager” shall have the meaning specified in Paragraph 2.2.3 (Facility Project Manager).

1.3.74 FINAL ACCEPTANCE

The term “Final Acceptance” shall mean the Phase Acceptance of the System at all County Facilities, following which County shall be able to use the System for all business purposes, following the expiration of the Warranty Period at the last County Pharmacy of the last Phase implemented.

1.3.75 FINAL ACCEPTANCE DATE

The term “Final Acceptance Date” shall mean the date of Final Acceptance.

1.3.76 FIRST PRODUCTIVE USE

The term “First Productive Use” shall mean the first point at which the System will be activated and in use in the Production Environment by County, following County’s approval of Deliverable 3.3.1 (System in Production Use) of Exhibit A (Statement of Work).

1.3.77 FIRST PRODUCTIVE DATE

The term “First Productive Date” shall mean the date of First Productive Use.

1.3.78 FIXED HOURLY RATE

The term “Fixed Hourly Rate” shall mean the hourly rate as specified in Exhibit C (Payment Schedule) for Professional Services and Software Modifications, as applicable, that Contractor may provide following First Productive Use in the form of Optional Work if requested by County.

1.3.79 HIGH IMPACT DEFICIENCY

The term “High Impact Deficiency” shall mean a Deficiency of Severity Level 2, as further specified in Exhibit B (System Maintenance).

1.3.80 HIPAA

The term “HIPAA” shall mean Health Insurance Portability and Accountability Act and the rules and regulations from time to time promulgated there under, as set forth in Exhibit H (Business Associate Agreement), which mandates the safeguarding of personal and confidential medical information.

1.3.81 IMMEDIATE IMPACT DEFICIENCY

The term “Critical Deficiency” shall mean a Severity Level 1 Deficiency, as further specified Exhibit B (System Maintenance).

1.3.82 IMPLEMENTATION PERIOD

The term “Implementation Period” shall mean the period from County’s notice to proceed System Implementation for any Phase through the applicable Phase Acceptance.

1.3.83 IMPLEMENTATION SERVICES

The term “Implementation Services” shall mean System Environment validation, Application Software installation, conversion and migration of Existing Data, if any, System Tests,

System Training and other Work to be provided by Contractor as part of the System implementation pursuant to Exhibit A (Statement of Work) up to and including Final Acceptance.

1.3.84 INITIAL TERM

The term “Initial Term” shall have the meaning specified in Paragraph 7.1 (Initial Term).

1.3.85 INTEGRATED FUNCTIONAL TEST

The term “Integrated Functional Test” shall mean the System Test conducted to test the System Software functionality and validated by Contractor in accordance with Subtask 3.1 (Conduct System Tests) of Exhibit A (Statement of Work).

1.3.86 INTERFACED SYSTEM

The term “Interfaced System” shall mean any system interfaced with the System, including where County Software may reside.

1.3.87 INTERFACES

The term “Interface(s)” shall mean the set of software mechanisms, consisting of Baseline Interfaces, Additional Interfaces and any Existing Interfaces, which may be provided by Contractor under this Agreement, which allow the transfer of electronic data and/or software commands between computer systems, networks, applications or modules, and related Documentation.

1.3.88 KEY DELIVERABLE

The term “Key Deliverable” shall mean a Deliverable marked as such on Exhibit D (Project Schedule).

1.3.89 LICENSE

The term “License” shall have the meaning specified in Paragraph 10.2 (License).

1.3.90 MAINTENANCE FEES

The term “Maintenance Fee(s)” shall mean and include the fees to be paid by County to Contractor for the provision of System Maintenance, including Maintenance Services and Support Services, in accordance with the terms of this Agreement, including Exhibit C (Payment Schedule).

1.3.91 MAINTENANCE PERIOD

The term “Maintenance Period” shall mean any period from Phase Acceptance through the end of the term of the Agreement.

1.3.92 MAINTENANCE SERVICES

The term “Maintenance Services” shall mean any goods or services provided under this Agreement for maintaining the System, including but not limited to updates, corrections, enhancements and other Updates to the System Software, interfaces, data extractions, system availability, data security and reports, as further specified in Exhibit B (System Maintenance).

1.3.93 MAJOR DEFICIENCY

The term “Major Deficiency” shall mean a Deficiency of Severity Level 1 or Severity Level 2, as further specified in Exhibit B (System Maintenance).

1.3.94 MAXIMUM FIXED PRICE

The term “Maximum Fixed Price” shall mean the maximum amount to be paid by County to Contractor for any Optional Work approved by County to be provided by Contractor in accordance Paragraph 5.4 (Optional Work) of Exhibit A (Statement of Work).

1.3.95 MILESTONE

The term “Milestone” shall mean a Deliverable marked as such on the Project Schedule or considered as a milestone by County.

1.3.96 METHODM

The term “MethodM” shall mean and refer to Contractor’s Trademark product/methodology which utilizes a structured process of: design, building, maintenance and support; for Contractor’s Application Software to ensure implementations are properly configured, predictable and efficient.

1.3.97 MINOR IMPACT DEFICIENCY

The term “Minor Impact Deficiency” shall mean a Deficiency of Severity Level 4, as further specified in Exhibit B (System Maintenance).

1.3.98 MODERATE IMPACT DEFICIENCY

The term “Moderate Impact Deficiency” shall mean a Deficiency of Severity Level 3, as further specified in Exhibit B (System Maintenance).

1.3.99 MONTHLY FEE

The term “Monthly Fee” shall mean 1/12th of the Annual Fee.

1.3.100 OPERATING SOFTWARE

The term “Operating Software” shall mean any third party operating software that is part of System Environment, including Server Environment and Client Environment.

1.3.101 OPTIONAL WORK

The term “Optional Work” shall mean Software Modifications, Professional Services and Additional Products that may be provided by Contractor to County following First Productive Use upon County’s request and approval in accordance with Task 6 (Provide Optional Work) of Exhibit A (Statement of Work) and identified appropriately in Schedule C.1 (Optional Work).

1.3.102 PAYMENT SCHEDULE

The term “Payment Schedule” shall mean prices for Deliverables, rates and other fees identified as Exhibit C (Payment Schedule) with all Schedules thereto.

1.3.103 PHASE

The term “Phase” shall mean and refer to each phase of System Implementation and subsequent System Maintenance for each group of County Facilities and County Pharmacies designated by County, commencing with the Pilot Phase.

1.3.104 PHASE ACCEPTANCE

The term “Phase Acceptance” shall mean County’s written approval in accordance with the terms of this Agreement of Deliverable 3.3.2 (Performance Verification Report) of Exhibit A

(Statement of Work) as it relates to the applicable Phase of System Implementation.

1.3.105 PHASE ACCEPTANCE DATE

The term “Phase Acceptance Date” shall mean the date of any Phase Acceptance.

1.3.106 PILOT FACILITY

The term “Pilot Facility” shall mean the first County Facility, listed in Attachment A.4 (County Pharmacies), for which Contractor shall provide tasks, subtasks, deliverables, goods, services and other Work under this Agreement, including completed System Implementation.

1.3.107 PILOT PHARMACY

The term “Pilot Pharmacy” shall mean any one of County Pharmacies designated as such by County and specified in Attachment A.4 (County Pharmacies), for which Contractor shall provide tasks, subtasks, deliverables, goods, services and other Work under this Agreement as part of the Pilot Phase.

1.3.108 PILOT PHASE

The term “Pilot Phase” shall mean and refer to the provision by Contractor of the tasks, subtasks, deliverables, goods, services and other Work specified in Exhibit A (Statement of Work), including System Implementation, System Maintenance and any Optional Work, for the County Pharmacies designated by County as Pilot Pharmacies.

1.3.109 POOL DOLLARS

The term “Pool Dollars” shall mean the maximum amount allocated under this Agreement for the provision by Contractor of Optional Work, including Software Modifications, Professional Services and Additional Products approved by County in accordance with the terms of this Agreement.

1.3.110 PRODUCTION ENVIRONMENT

The term “Production Environment” shall mean the System Environment for Production Use of the System.

1.3.111 PRODUCTION PLAN

The term “Production Plan” shall have the meaning specified in Section 1.3 (Definitions) of Exhibit A (Statement of Work).

1.3.112 PRODUCTION USE

The term “Production Use” shall mean the actual use of the System in the Production Environment for the performance of County’s operations commencing upon First Productive Use.

1.3.113 PROFESSIONAL SERVICES

The term “Professional Service(s)” shall mean Software Modifications, Consulting Services and Additional Training that Contractor may provide following First Productive Use upon County’s request therefor in the form of Optional Work in accordance with Paragraph 5.4 (Optional Work) and Task 6 (Provide Optional Work) of Exhibit A (Statement of Work).

1.3.114 PROJECT CONTROL DOCUMENT; PCD

The terms “Project Control Document” and “PCD” shall mean the detailed plan that may be required to be provided by Contractor during System Implementation for each Phase under

Exhibit A (Statement of Work), as may further be specified in Section 1.3 (Definitions) of Exhibit A (Statement of Work).

1.3.115 PROJECT MANAGEMENT PLAN

The term “Project Management Plan” shall mean the detailed plan for System Implementation to be provided by Contractor to County for each Phase, which will appropriately update the applicable sequentially numbered Exhibit D (Project Schedule) for such Phase, as further specified in Section 1.3 (Definitions) of Exhibit A (Statement of Work).

1.3.116 PROJECT SCHEDULE

The term “Project Schedule” shall mean the agreed upon timeline for System Implementation Tasks, Subtasks and Deliverables specified in Exhibit A (Statement of Work), as identified as Exhibit D (Project Schedule).

1.3.117 RELEASE CONDITIONS

The term “Release Condition(s)” shall have the meaning set forth in Paragraph 10.3.3 (Source Code Release Conditions).

1.3.118 RELIABILITY TEST

The term “Reliability Test” shall mean System Test conducted after implementation of the System Environment, including Operating Software, to validate that the System meets the System Availability requirements in accordance with Subtask 3.1 (Conduct System Tests) of Exhibit A (Statement of Work).

1.3.119 REPLACEMENT PRODUCT

The term “Replacement Product” shall have the meaning specified in Paragraph 12.3 (Continuous Product Support).

1.3.120 REPLACEMENT SYSTEM

The term “Replacement System” shall mean any system, which, upon County’s election, may replace the System, including the Software provided by Contractor under this Agreement, and for migration to which County may request that Contractor provide assistance in the form of Optional Work.

1.3.121 RESPONSE TIME DEFICIENCY

The term “Response Time Deficiency” shall mean System not responding within the prescribed Response Time Baseline, as further specified in Exhibit B (System Maintenance).

1.3.122 SCHEDULED DOWNTIME

The term “Schedule Downtime” shall mean the System cannot be accessed due to System scheduled downtime agreed upon by the parties, including but not limited to preventive maintenance, updates, upgrades, scheduled reboots and restarts, as further specified in Exhibit B (System Maintenance).

1.3.123 SCOPE OF WORK

The term “Scope of Work” shall mean the scope of Optional Work agreed by the parties to be provided as Optional Work.

1.3.124 SERVER

The term “Server” shall mean the architectural and operational environment for the System provided by County as part of the Server Environment in accordance with Contractor’s specifications.

1.3.125 SERVER ENVIRONMENT

The term “Server Environment” shall mean the Server hardware and software provided by County as part of the System Environment in accordance with Contractor’s specifications.

1.3.126 SERVICES

The term “Service(s)” shall mean Implementation Services, Maintenance Services, Support Services, any services that are part of Optional Work and any other services provided by Contractor under this Agreement.

1.3.127 SEVERITY LEVEL

The term “Severity Level” shall mean the applicable Deficiency severity level for correcting Deficiencies, as further specified in Exhibit B (System Maintenance).

1.3.128 SOFTWARE

The term “Software” shall mean all Application Software and Third Party Software, and related Documentation, provided by Contractor to County as part of the System in accordance with the terms of this Agreement.

1.3.129 SOFTWARE MODIFICATIONS

The term “Software Modification(s)” shall mean Additional Customizations, if any, and Additional Interfaces, and related Documentation, that Contractor may provide following First Productive Use upon County’s request therefor as Application Modifications in accordance with Paragraph 5.4 (Optional Work) and Task 6 (Provide Optional Work) of Exhibit A (Statement of Work), which will update Schedule C.1 (Optional Work).

1.3.130 SOURCE CODE

The term “Source Code” shall mean the source code for Application Software, to the extent available, developed for or licensed by Contractor to County under this Agreement, including Baseline Application, Application Modifications and Interfaces, together with all Documentation and other proprietary information related to such source code.

1.3.131 SOURCE CODE ESCROW AGREEMENT

As used herein, the term “Source Code Escrow Agreement” shall mean an agreement between Contractor and a third party Source Code escrow agent, including all addenda, amendments and modifications thereto, for depositing the Source Code in accordance with Paragraph 10.3.1 (Source Code Escrow), incorporated into this Agreement by reference as Exhibit K (Source Code Escrow Agreement).

1.3.132 SPECIFICATIONS

The term “Specification(s)” shall mean any or all of the following, as applicable:

1. All specifications, requirements and standards set forth in Attachment A.1 (System Requirements) and included as Deliverables in Exhibit A (Statement of Work).
2. All System Performance Requirements and standards set forth in this Agreement,

including, but not limited to, requirements for System Availability and System Response Time identified in Exhibit B (System Maintenance).

3. The Documentation, to the extent not inconsistent with any of the foregoing in this definition.
4. All specifications identified as such by Contractor, including, but not limited to, the Project Schedule and the Project Control Plan, but only to the extent: (i) not inconsistent with any of the foregoing in this Paragraph; and (ii) acceptable to County in its sole discretion.
5. All System Environment requirements and certifications provided by Contractor in accordance with this Agreement with respect to the System.
6. All written and/or electronic materials furnished by or through Contractor regarding the System Software or the System, including functionality, features, capacity, availability, system response times, accuracy or any other performance or other System criteria or any element of the System or any System component.

1.3.133 STATE

The term “State” means the State of California.

1.3.134 STATEMENT OF WORK; SOW

The terms “Statement of Work” and “SOW” shall mean the Work to be provided by Contractor pursuant to this Agreement identified in terms of Tasks, Subtasks and Deliverables in Exhibit A (Statement of Work).

1.3.135 SUPPORT HOURS

The term “Support Hours” shall mean the hours during which Contractor shall be required to provide System Maintenance, 24 hours per day, 7 days per week, 365/366 days per year, as further specified Exhibit B (System Maintenance).

1.3.136 SUPPORT SERVICES

The term “Support Services” shall mean any goods or services provided under this Agreement in support of the System, including but not limited to updates, corrections, enhancements, customer support, interfaces, data extractions, system availability, data security, reports and any applicable regulatory compliance, as further specified in Exhibit B (System Maintenance).

1.3.137 SYSTEM

The term “System” shall mean the combination of the software, hardware, hosting services, maintenance, technical support and any other Work, including all System Software, System Data, Server Environment and all related Services, provided by Contractor to County pursuant to the terms of this Agreement.

1.3.138 SYSTEM AVAILABILITY

The term “System Availability” shall mean, with respect to any particular calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the Total Monthly Time and thereafter dividing the difference so obtained by the Total Monthly Time, as further specified Exhibit B (System Maintenance).

1.3.139 SYSTEM AVAILABILITY DEFICIENCY

The term “System Availability Deficiency” shall mean the System not meeting the System Availability requirements, as further specified in Exhibit B (System Maintenance).

1.3.140 SYSTEM DATA

The term “System Data” shall mean the data utilized by the System.

1.3.141 SYSTEM ENVIRONMENT

The term “System Environment” shall mean the architectural and operational environment of the System consisting of the Server Environment and Client Environment, and related Documentation, including System Hardware and Operating Software.

1.3.142 SYSTEM HARDWARE

The term “System Hardware” shall mean any hardware and other equipment that are part of System Environment, including Server Environment and Client Environment.

1.3.143 SYSTEM MAINTENANCE

The term “System Maintenance” shall mean Maintenance Services and Support Services provided by Contractor in accordance with Exhibit B (System Maintenance), as further specified in Paragraph 5.3 (System Maintenance).

1.3.144 SYSTEM NEIGHBORHOOD

The term “System” shall mean the infrastructure of the System, including but not limited to the System, all Interfaced Systems, the CFS System and the Existing Software residing in the same System neighborhood as the System.

1.3.145 SYSTEM PERFORMANCE

The term “System Performance” shall mean the performance of the System with respect to System Response Time, System Availability and Disaster Recovery, as further specified in Exhibit B (System Maintenance).

1.3.146 SYSTEM PERFORMANCE DEFICIENCY

The term “System Performance Deficiency” shall mean the System not meeting any of the System Performance Requirements, as further specified in Exhibit B (System Maintenance).

1.3.147 SYSTEM PERFORMANCE REQUIREMENTS

The term “System Performance Requirements” shall the requirements for System Performance, including those specified in Attachment A.1 (System Requirements) and Exhibit B (System Maintenance).

1.3.148 SYSTEM PERFORMANCE TEST

The term “System Performance Test” shall mean the System Test conducted to test the System Software under the stress of high volumes and large number of users and validated by Contractor in accordance with Subtask 3.1 (Conduct System Tests) of Exhibit A (Statement of Work).

1.3.149 SYSTEM REQUIREMENTS

The term “System Requirements” shall mean business, operational, technical and/or functional requirements relating to the operation or utilization of the System, as specified in

Attachment A.1 (System Requirements).

1.3.150 SOFTWARE RESPONSE TIME

The terms “Software Response Time” shall mean the time elapsed for a transaction within the hosted gateway, as may be further specified in Attachment A.1 (System Requirements) and Exhibit B (System Maintenance).

1.3.151 SYSTEM SOFTWARE

The term “System Software” shall mean all Software, Operating Software and County Software, and related Documentation, provided by Contractor or by County in accordance with Contractor’s specifications as part of the System under this Agreement.

1.3.152 SYSTEM TEST

The term “System Test” shall mean any of the tests conducted by County or Contractor, as applicable, under Exhibit A (Statement of Work), including but not limited to Reliability Test, Integrated Functional Test and System Performance Test, as further described in Paragraph 11.1 (System Tests).

1.3.153 SYSTEM TRAINING

The term “System Training” shall have the meaning as specified in Task 5 (System Training) of Exhibit A (Statement of Work).

1.3.154 TASK; TASK; SUBTASK; SUBTASK

The terms “Task”, “task”, “Subtask” and “subtask” shall mean one of the areas of Work to be performed under this Agreement, including those identified as numbered Tasks and Subtasks in Exhibit A (Statement of Work).

1.3.155 TEST ENVIRONMENT

The term “Test Environment” shall mean the non-production System Environment set up by County in accordance with Contractor’s specifications and certified by Contractor pursuant to Subtask 2.3 (Verify System Environment) of Exhibit A (Statement of Work) for Application Software implementation, System Tests and System Training.

1.3.156 THIRD PARTY APPLICATION

The term “Third Party Application” shall mean the portion of the Application Software provided by Contractor to County under this Agreement that is not proprietary to Contractor.

1.3.157 THIRD PARTY PRODUCTS

The term “Third Party Product(s)” shall mean any products of third parties that may be provided by Contractor to County under this Agreement, including Additional Products, Third Party Application and Third Party Software.

1.3.158 THIRD PARTY SOFTWARE

The term “Third Party Software” shall mean any software of third parties provided by Contractor to County under this Agreement as part of the Software that is not Operating Software.

1.3.159 TOTAL MONTHLY TIME

The term “Total Monthly Time” shall mean all minutes in the Days of Operation for a calendar month, excluding Scheduled Downtime.

1.3.160 TRAINING

The term “Training” shall mean training relating to the System to be provided by Contractor pursuant to this Agreement, including initial System Training and Additional Training that County may acquire as part of Professional Services.

1.3.161 TRAINING PLAN

The term “Training Plan” shall have the meaning specified in Section 1.3 (Definitions) of Exhibit A (Statement of Work).

1.3.162 UNSCHEDULED DOWNTIME

The term “Unscheduled Downtime” shall mean the total amount of time during any calendar month, measured in minutes, during which the System has a Major Deficiency that is unresolved by Contractor, excluding Scheduled Downtime, as further specified in Exhibit B (System Maintenance).

1.3.163 UPDATE(S)

The term “Update(s)” shall mean and include any additions to and/or replacements to the Software, available or made available subsequent to First Productive Use, and shall include all Application Software performance and functionality enhancement releases, new Version Releases, Third Party Software upgrades, improvements, interim updates, including fixes and patches, Deficiency corrections, and modifications to the Application Software, including but not limited to those required for the System to remain in compliance with applicable Federal and State laws and regulations and the terms of this Agreement, provided by Contractor in accordance with Exhibit B (System Maintenance).

1.3.164 USER

The term “User” shall mean any person authorized by County to access or use the System pursuant to this Agreement.

1.3.165 VERSION RELEASE

The term “Versions Release” shall mean Contractor’s Application Software major version upgrade which may contain new software functionalities and features and/or system compatibilities.

1.3.166 WARRANTY; WARRANTIES

The term “Warranty(ies)”, whether singular or plural, shall mean and refer to all of the warranties regarding Contractor’s Work under the Agreement, including general warranties, System warranties, System Performance warranties and Services warranties, as further specified in Section 5 (Warranties) of Exhibit B (System Maintenance).

1.3.167 WARRANTY PERIOD

The term “Warranty Period” shall have the meaning specified in Section 1.3 (Definitions) of Exhibit A (Statement of Work).

1.3.168 WORK

The term “Work” shall mean any and all tasks, subtasks, deliverables, goods, services and other Work provided, or to be provided, by or on behalf of Contractor pursuant to this Agreement, including but not limited to System components, Implementation Services, System Maintenance and Optional Work.

1.3.169 WORK ORDER

The term “Work Order” shall mean the terms of any Optional Work agreed to by County and Contractor applicable to the provision of Professional Services and Additional Products by Contractor, as set forth Task 6 (Provide Optional Work) of Exhibit A (Statement of Work)

1.3.170 WORK PRODUCT

The term “Work Product” shall mean the Application Software, external systems Interfaces which are not proprietary to County, medical devices Interfaces, related Documentation and other non-public and proprietary materials, products, processes and procedures developed by Contractor outside of the scope of this Agreement (whether prior to or during the term of this Agreement), which Contractor desires to use hereunder, as well as any improvements, developments, derivatives or modifications to the foregoing, including derivative works, developed by Contractor, but excluding County Materials.

2. ADMINISTRATION OF AGREEMENT – COUNTY

2.1 COUNTY ADMINISTRATION

All persons administering this Agreement on behalf of County and identified in this Paragraph 2 below (hereinafter “County Key Personnel”) are listed in Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement). Unless otherwise specified, reference to each of the persons listed in such Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement) shall also include his/her designee. County will notify Contractor in writing of any change in the names and/or addresses of County Key Personnel.

No member of County Key Personnel is authorized to make any changes in any of the terms and conditions of this Agreement other than those specifically authorized under Paragraph 4 (Changes Notices and Amendments).

2.2 COUNTY KEY PERSONNEL

2.2.1 COUNTY’S PROJECT DIRECTOR

County’s Project Director will be responsible for ensuring that the objectives of this Agreement are met. County’s Project Director will have the right at all times to inspect any and all Work provided by or on behalf of Contractor. Unless specified otherwise, County’s Project Director shall also include a designee.

2.2.2 COUNTY’S PROJECT MANAGER

County’s Project Manager will be responsible for ensuring that the technical, business and operational standards and requirements of this Agreement are met. County’s Project Manager will interface with Contractor’s Project Manager on a regular basis. County’s Project Manager will report to County’s Project Director regarding Contractor’s performance with respect to technical, business and operational standards and requirements of the Agreement. Unless specified otherwise, County’s Project Manager shall be the designee of County’s Project Director and shall include the applicable Facility Project Manager as his/her own designee.

2.2.3 FACILITY PROJECT MANAGER

Facility Project Manager will be responsible for ensuring that the technical, business and operational standards and requirements of this Agreement relating to the applicable County Facility are met. Facility Project Manager will advise County’s Project Manager as to

Contractor's performance with respect to such requirements and standards. Facility Project Manager will interface with Contractor's Project Manager on a regular basis or as otherwise required by County.

2.3 COUNTY PERSONNEL

All County personnel assigned to this Agreement shall be under the exclusive supervision of County. Contractor understands and agrees that all such County personnel are assigned only for the convenience of County. Contractor hereby represents that its price, Project Schedule, Project Management Plan and performance hereunder are based solely on the work of Contractor's personnel, except as otherwise expressly provided in this Agreement.

2.4 APPROVAL OF WORK

All Tasks, Subtasks, Deliverables, including Key Deliverables, and other Work provided by Contractor under this Agreement must have the written approval of County's Project Director as described in this Paragraph 2.4. In no event shall County be liable or responsible for any payment prior to such written approval. Furthermore, County reserves the right to reject any Work not approved by County.

3. **ADMINISTRATION OF AGREEMENT – CONTRACTOR**

3.1 CONTRACTOR ADMINISTRATION

All persons administering this Agreement on behalf of Contractor and identified in this Paragraph 3 below (hereinafter "Contractor Key Personnel") are listed in Section 2 (Contractor Key Personnel) of Exhibit E (Administration of Agreement). All staff employed by and/or behalf of Contractor, including the persons listed in such Section 2 (Contractor Key Personnel) of Exhibit E (Administration of Agreement), shall be adults who are fully fluent in both spoken and written English. Contractor shall notify County in writing of any change in the names and/or addresses of Contractor Key Personnel.

No member of Contractor Key Personnel is authorized to make any changes in any of the terms and conditions of this Agreement other than those specifically authorized under Paragraph 4 (Changes Notices and Amendments).

3.2 CONTRACTOR KEY PERSONNEL

3.2.1 CONTRACTOR'S PROJECT DIRECTOR

Contractor's Project Director shall be responsible for Contractor's performance of all its work under the Agreement and ensuring Contractor's compliance with this Agreement. Contractor's Project Director shall meet and confer with County's Project Director on a regular basis, at least monthly or as otherwise required by County, to review project progress and to discuss project coordination. Such meetings shall be conducted via teleconference or at a time and place agreed to by County's Project Director and Contractor's Project Director.

3.2.2 CONTRACTOR'S PROJECT MANAGER

Contractor's Project Manager shall be responsible for Contractor's day-to-day activities as related to this Agreement and for reporting to County in the manner set forth in Paragraph 3.5 (Reports by Contractor). Contractor's Project Manager shall interface with County's Project Manager on a regular basis and shall be available during Business Days between the hours of 8:00 a.m. and 5:00 p.m. Pacific Time, or as otherwise required by County, for telephone contact and/or to meet with County personnel regarding the operation of this Agreement, as required by County's Project Director. Contractor's Project Manager shall

meet and confer with County's Project Manager on a regular basis, at least monthly or as otherwise required by County, to review project progress and discuss project coordination. Such meetings shall be conducted via teleconference or at a time and place agreed to by County's Project Manager and Contractor's Project Manager.

3.3 APPROVAL OF CONTRACTOR'S STAFF

- 3.3.1 In fulfillment of its responsibilities under this Agreement, Contractor shall utilize, and permit utilization of, only staff fully trained and experienced, and as appropriate, licensed or certified in the technology, trades, tasks and subtasks required by this Agreement. Contractor shall supply sufficient staff to discharge its responsibilities hereunder in a timely and efficient manner.
- 3.3.2 County, acting through County's Project Director, shall have the right to approve or disapprove each member, or proposed member, of Contractor's Project Director, Contractor's Project Manager and any staff providing Training or on-site Work to County under this Agreement or with access to any of County's sensitive information including County's Confidential Information (hereinafter "Contractor Key Staff") prior to and during their performance of any Work hereunder, as well as so approving or disapproving any proposed deletions from or other changes in such Contractor Key Staff. County agrees to remain reasonable in any such approval or disapproval. County, acting through County's Project Manager, in his/her reasonable discretion, may require replacement of any member of the Contractor Key Staff performing, or offering to perform, Work hereunder. Contractor shall provide County with a resume of each such proposed initial Contractor Key Staff member and a proposed substitute and an opportunity to interview such person prior to his/her performance of any Work hereunder. Contractor shall have thirty (30) days from the date of County's written request to replace such staff.
- 3.3.3 In addition, Contractor shall provide to County's Project Director an executed Confidentiality and Assignment Agreement (Exhibit G) on or immediately after the Effective Date, but in no event later than the date any member of the Contractor Key Staff first performs Work under this Agreement.
- 3.3.4 Contractor shall, to the maximum extent possible, take all necessary steps to ensure continuity over time of the membership of the group constituting the Contractor Key Staff. Contractor shall promptly fill any Contractor Key Staff vacancy with personnel having qualifications at least equivalent to those of the Contractor Key Staff member(s) being replaced.
- 3.3.5 In the event Contractor should ever need to remove any member of the Contractor Key Staff from performing Work under this Agreement, Contractor shall provide County with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible, and shall work with County on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Should County be dissatisfied with any member of the Contractor Key Staff during the term of the Agreement, Contractor shall replace such person with another to County's satisfaction.
- 3.3.6 Contractor shall supply sufficient staff to discharge its responsibilities hereunder in a timely and efficient manner.
- ### 3.4 BACKGROUND AND SECURITY INVESTIGATIONS
- 3.4.1 All Contractor staff performing Work on-site under this Agreement shall undergo and pass, to the reasonable satisfaction of County, a background investigation as a condition of

beginning and continuing Work under this Agreement. County shall use its discretion in determining the method of background clearance to be used, which may include, but is not limited to, fingerprinting (which Contractor may perform consistent with its processes and deliver all relevant documentation to County), provided any method is not prohibited by law. The fees associated with obtaining the background information shall be at the expense of Contractor, regardless if Contractor's staff passes or fails the background clearance investigation. County shall perform the background check and bill Contractor for the cost or deduct such amount from funds owed by County to Contractor.

County may request that the Contractor's staff be immediately removed from working at any County facility at any time during the term of this Agreement. County will not provide to Contractor, nor to Contractor's staff any information obtained through County conducted background clearance.

- 3.4.2 County may immediately, in its sole discretion, deny or terminate facility access to any Contractor's staff, including subcontractor staff, who do not pass such background investigation(s) to the reasonable satisfaction of County and/or whose background or conduct is incompatible with County's facility access.
- 3.4.3 Disqualification, if any, of Contractor's staff, including subcontractor staff, pursuant to this Paragraph 3.4 shall not relieve Contractor of its obligation to complete all Work in accordance with the terms and conditions of this Agreement.

3.5 REPORTS BY CONTRACTOR

In addition to any reports required elsewhere pursuant to this Agreement including the Statement of Work, in order to control expenditures and to ensure the reporting of all Work provided by Contractor, Contractor shall provide to County's Project Manager as frequently as requested by County's Project Manager, but in no event more frequently than weekly, written reports which shall include, at a minimum, the following information:

1. Period covered by the report;
2. Overview of the reporting period;
3. Tasks, subtasks, deliverables, goods, services and other Work scheduled for the reporting period which were completed;
4. Tasks, subtasks, deliverables, goods, services and other Work scheduled the reporting period which were not completed;
5. Tasks, subtasks, deliverables, goods, services and other Work not scheduled for but completed in the reporting period.
6. Tasks, subtasks, deliverables, goods, services and other Work scheduled to be completed in the next reporting period;
7. Issues resolved and to be resolved;
8. Summary of project status as of reporting date;
9. Updated milestone chart; and
10. Any other information which County may from time-to-time require.

3.6 RULES AND REGULATIONS

During the time when Contractor's employees, subcontractors or agents are at County

facilities, such persons shall be subject to the applicable rules and regulations of County facilities. It is the responsibility of Contractor to acquaint such persons, who are to provide Work, with such rules and regulations. In the event that County determines that an employee, subcontractor or agent of Contractor has violated any applicable rule or regulation, County shall notify Contractor, and Contractor shall undertake such remedial or disciplinary measures as Contractor determines appropriate. If the problem is not thereby corrected, then Contractor shall permanently withdraw its employee, subcontractor or agent from the provision of Work upon receipt of written notice from County that: (i) such employee, subcontractor or agent has violated such rules or regulations; or (ii) such employee's, subcontractor's or agent's actions, while on County premises, indicate that the employee, subcontractor or agent may adversely affect the provision of Work. Upon removal of any employee, subcontractor or agent, Contractor shall immediately replace the employee, subcontractor or agent and continue uninterrupted Work hereunder.

3.7 CONTRACTOR'S STAFF IDENTIFICATION

- 3.7.1 Contractor, at Contractor's cost, shall provide each member of the staff assigned to this Agreement with a visible photo identification badge, which identified staff by name and photo. Contractor's staff, while on duty or when entering a County facility or its grounds are required to have prominently displayed County approved photo identification badge (in this Paragraph 3.7 "Contractor's Staff ID") on the upper part of the body and visible at all times.
- 3.7.2 Contractor shall ensure that all of its personnel have obtained Contractor's staff IDs before being assigned to work in a County facility. Contractor personnel may be asked to leave a County facility by a County representative if they do not have the proper Contractor's Staff ID on their person.

4. CHANGES NOTICES AND AMENDMENTS

4.1 GENERAL

No representative of either County or Contractor, including those named in this Agreement, is authorized to make any changes in any of the terms, obligations or conditions of this Agreement, except through the procedures set forth in this Paragraph 4. County reserves the right to change any portion of the Work required under this Agreement and to any other provisions of this Agreement. All such changes shall be accomplished only as provided in this Paragraph 4.

4.2 CHANGE NOTICES

For any change requested by County which does not affect the scope of Work, term, payments, or any term or condition of this Agreement, including expenditure of Pool Dollars, a written notice of such change (hereinafter "Change Notice") shall be prepared and executed by County's Project Director and an authorized officer of Contractor; provided that Change Notices that engage Contractor to provide Optional Work under Paragraph 5.4 (Optional Work) (i) do not require any amendment of any term or condition of this Agreement, (ii) use the then-available Pool Dollars, if any, and (iii) price all Optional Work at or below the applicable pricing set forth in Exhibit C (Pricing Schedule) including Schedule C.1 (Optional Work Schedule).

4.3 AMENDMENTS

Except as otherwise provided in this Agreement, for any change which affects the scope of Work, term, payments, or any term or condition included in this Agreement, a negotiated

written Amendment to this Agreement shall be prepared and executed by the authorized representatives of County and Contractor.

4.4 PROJECT SCHEDULE

As a result of completion of Deliverable 1.1 (Project Control Document) of Exhibit A (Statement of Work), a Project Schedule will be derived for the Work relating to Implementation Services as described in Exhibit A (Statement Work), which shall update Exhibit D (Project Schedule). Changes to the Project Schedule shall be made upon mutual agreement, in writing, by County's Project Director and Contractor's Project Director by Change Notice or otherwise, provided that County's Project Director's and Contractor's Project Director's agreement to alter the Project Schedule shall not prejudice either party's right to claim that such alterations constitute an Amendment to this Agreement that shall be governed by the terms of Paragraph 4.3 (Amendments) above.

4.5 EXTENSIONS OF TIME

Notwithstanding any other provision of this Paragraph 4, to the extent that extensions of time for Contractor performance do not impact either the scope of Work or cost of this Agreement, County's Project Director, in his/her sole discretion, may grant Contractor extensions of time in writing for the Work listed in the applicable sequentially numbered Exhibit D (Project Schedule), provided such extensions shall not exceed a total of six (6) months beyond Final Acceptance.

County maintains databases that track/monitor Contractor performance history. Information entered into such databases may be used for a variety of purposes, including determining whether County will exercise the Agreement extension option(s).

4.6 BOARD ORDERS

Notwithstanding any other provision of this Paragraph 4 or Paragraph 21 (Termination for Convenience), Director shall take all appropriate action to carry out any orders of County's Board of Supervisors relating to this Agreement, and, for this purpose, the Director is authorized to: (i) issue written notice(s) of partial or total termination of this Agreement pursuant to Paragraph 21 (Termination for Convenience) without further action by County's Board of Supervisors and/or (ii) prepare and execute Amendment(s) to this Agreement, which shall reduce the scope of Work and the Contract Sum without further action by County's Board of Supervisors.

4.6.1 Such notices of partial or total termination shall be authorized under the following conditions:

1. Notices shall be in compliance with all applicable Federal, State and County laws, rules, regulations, ordinances, guidelines and directives.
2. Director shall obtain the approval of County Counsel for any notice.
3. Director shall file a copy of all notices with the Executive Office of County's Board of Supervisors and County's Chief Executive Office within thirty (30) days after execution of each notice.

4.6.2 Such Amendments shall be authorized under the following conditions:

1. Amendments shall be in compliance with all applicable Federal, State, and County laws, rules, regulations, ordinances, guidelines and directives.

2. County's Board of Supervisors has appropriated sufficient funds for purposes of such Amendments and this Agreement.
3. Director shall obtain the approval of County Counsel for any Amendment.
4. Director shall file a copy of all Amendments with the Executive Office of County's Board of Supervisors and County's Chief Executive Office within thirty (30) days after execution of each Amendment.

4.7 COUNTY AFFILIATES

Notwithstanding the provisions of Paragraph 4.3 (Amendments) above, the Director is specifically authorized to execute an Amendment to this Agreement on behalf of County upon County's election to extend the scope of this Agreement to any County Affiliates, at County's sole discretion, in accordance with the terms negotiated herein, which may require increase in the Contract Sum and execute any subscription agreement, if required, amongst and between County, any County Affiliate and/or Contractor. Any such added Affiliate Pharmacies will also be added to Attachment A.4 (County Pharmacies) and will be eligible to receive the Work hereunder.

4.8 FACSIMILE

Except for the parties' initial signatures to this Agreement, which must be provided in "original" form and not by facsimile, County and Contractor hereby agree to regard facsimile representations of original signatures of authorized officials of each party, when appearing in appropriate places on the Change Notices prepared pursuant to this Paragraph 4 and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices to this Agreement, such that the parties need not follow up facsimile transmissions of such documents by subsequent (non-facsimile) transmissions of "original" versions of such documents.

5. **SCOPE OF WORK**

In exchange for County's payment to Contractor of the fees and applicable taxes arising under the Agreement and invoiced by Contractor, Contractor shall (a) on a timely basis provide, complete, deliver and implement all Work set forth in this Agreement, including Exhibit A (Statement of Work) and Exhibit B (System Maintenance), including but not limited to components of the System, Implementation Services, System Maintenance and any Optional Work; and (b) grant to County a limited License to the Software, as specified in Paragraph 10.2 (License). Contractor shall perform all such tasks, subtasks, deliverables, goods, services and other Work in accordance with Exhibit A (Statement of Work) with all Attachments thereto and Exhibit B (System Maintenance) with all Schedules thereto at the applicable rates and prices specified in Exhibit C (Payment Schedule) with all Schedules thereto.

5.1 SYSTEM COMPONENTS

Contractor shall provide the License to all Software, including Application Software and Third Party Software, in order to meet the System Requirements, all in accordance with the provisions of Paragraph 10 (System Ownership and License) and the Agreement. In addition, Contractor shall certify that the System Environment provided by County in accordance with Contractor's specifications is capable of meeting the System Performance Requirements, as provided in Exhibit A (Statement of Work), including Attachment A.1 (System Requirements).

5.2 IMPLEMENTATION SERVICES

Contractor shall provide Implementation Services, including System setup, installation, testing, training and other services through Final Acceptance of the System, as required for successful implementation of the System, as specified in Exhibit A (Statement of Work).

5.3 SYSTEM MAINTENANCE

Contractor shall provide to County services relating to the hosting, maintenance and support of the System, including System Data extraction, Maintenance Services and Support Services, as provided in, and in accordance with, this Agreement, including Exhibit B (System Maintenance) and Task 9 (System Maintenance) of Exhibit A (Statement of Work) (hereinafter "System Maintenance"). System Maintenance obligations shall commence upon First Productive Use and shall continue through the term of this Agreement.

5.4 OPTIONAL WORK

Upon the written request of County's Project Director or designee following First Productive Use and mutual agreement, Contractor shall provide to County Optional Work using Pool Dollars, including Application Modifications, Professional Services and/or Additional Products, in accordance with Task 6 (Provide Optional Work) of Exhibit A (Statement of Work) at the applicable pricing terms set forth in Exhibit C (Payment Schedule). Application Modifications shall only include those products and services relating to the requirements not reflected on the Effective Date in the Specifications, including System Requirements, as determined by County's Project Director or designee.

Upon County's request and Contractor's agreement to provide the Optional Work, Contractor shall provide to County within ten (10) Business Days of such request, or such longer period as agreed to by the parties, a proposed Scope of Work and a quote for a Maximum Fixed Price calculated in accordance with the applicable pricing terms set forth in Exhibit C (Payment Schedule). Contractor's quotation shall be valid for at least ninety (90) days from submission. Contractor shall commence the Optional Work following agreement by the parties with respect to such Scope of Work and the Maximum Fixed Price. Upon completion by Contractor, and approval by County in accordance with the terms of this Agreement, of such Optional Work, Schedule C.1 (Optional Work) shall be updated accordingly to add such items of Optional Work by Change Notice executed in accordance with Paragraph 4 (Changes Notices and Amendments).

5.5 STANDARD OF SERVICES

Contractor's services and other Work required by this Agreement shall during the term of the Agreement conform to reasonable commercial standards as they exist in Contractor's profession or field of practice. If Contractor's services and other Work provided under this Agreement fail to conform to such standards, upon notice from County specifying the failure of performance, Contractor shall, at Contractor's sole expense, provide the applicable remedy as specified in this Agreement, including Exhibit A (Statement of Work) and Exhibit B (System Maintenance). Contractor shall, at its own expense, correct any data in which (and to the extent that) errors have been caused by Contractor or malfunctions of the System or by any other tools introduced by Contractor into the System for the purpose of performing services or other Work under this Agreement or otherwise.

5.6 UNAPPROVED WORK

If Contractor provides any tasks, subtasks, deliverables, goods, services or other Work to

County other than those specified in this Agreement, or if Contractor provides such items requiring County's prior written approval without first having obtained such written approval, the same shall be deemed to be a gratuitous effort on the part of Contractor, and Contractor shall have no claim whatsoever against County therefor.

6. PROJECT IMPLEMENTATION

6.1 PROJECT SCHEDULE

Contractor shall implement the System in accordance with the Project Schedule, set forth in Exhibit D (Project Schedule), based upon the Project Plan developed and delivered pursuant to Subtask 1.1 (Develop Project Plan) of Exhibit A (Statement of Work). The Project Schedule shall, at a minimum, include the following items:

1. Deliverable Number;
2. Description;
3. Due Date;
4. Milestone/Key Deliverables Number;
5. Associated Deliverable; and
6. Any other items reasonably required by County under this Agreement.

6.2 KEY DELIVERABLES AND MILESTONES

Exhibit D (Project Schedule) shall specify certain Deliverables as Key Deliverables and/or Milestones, as determined by County. A Key Deliverable or a Milestone shall be deemed completed for purposes of this Paragraph 6.2 on the earliest date that all of the tasks, subtasks, deliverables, goods, services and other Work required for completion of such Key Deliverable or Milestone are completed and delivered to County, provided that all of such Work required for completion of such Key Deliverable or Milestone are thereafter approved in writing by County pursuant to Paragraph 2.4 (Approval of Work) without prior rejection by County or significant delay in County's approval thereof, which delay is the result of Contractor's failure to deliver such tasks, subtasks, deliverables, goods, services and other Work in accordance with the terms hereof. The determination of whether each Key Deliverable or Milestone has been so completed and so approved, and of the date upon which such Key Deliverable or Milestone was completed, shall be made by County's Project Director as soon as practicable in accordance with Paragraph 2.4 (Approval of Work) after County is informed by Contractor that such Key Deliverable or Milestone has been completed and is given all the necessary information, data and documentation to verify such completion.

7. TERM

7.1 INITIAL TERM

The term of this Agreement shall commence upon the Effective Date and shall expire five (5) years following Final Acceptance of the System, unless sooner terminated or extended, in whole or in part, as provided in this Agreement (hereinafter "Initial Term").

7.2 EXTENDED TERM

At the end of the Initial Term, County may, at its sole option, extend this Agreement for up to two (2) additional consecutive one (1) year terms (hereinafter "Extended Term") one (1)

year at a time, unless sooner terminated, in whole or in part, as provided in this Agreement. If County elects not to exercise its option to extend at the end of the Initial Term, or the Extended Term, as applicable, the remaining option(s) shall automatically lapse. County shall be deemed to have exercised its extension option(s) automatically, without further act, unless, no later than thirty (30) days prior to the expiration of the Initial Term or the Extended Term, as applicable, County notifies in writing Contractor that it elects not to extend the Agreement pursuant to this Paragraph 7.

7.3 **DEFINITION OF TERM**

As used throughout this Agreement, the word “term” when referring to the term of the Agreement shall include the Initial Term and the Extended Term, to the extent County exercises any of its options pursuant to this Paragraph 7.

7.4 **NOTICE OF EXPIRATION**

Contractor shall notify County when this Agreement is within six (6) months from the expiration of the Initial Term. Upon occurrence of this event, Contractor shall send written notification to County’s Project Director at the address set forth in Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement).

8. CONTRACT SUM

8.1 **MAXIMUM CONTRACT SUM**

The Contract Sum under this Agreement shall be the total monetary amount payable by County to Contractor for supplying all the tasks, subtasks, deliverables, goods, services and other Work required or requested by County under this Agreement. All Work completed by Contractor must be approved in writing by County in accordance with Paragraph 2.4 (Approval of Work). If County does not approve Work in writing, no payment shall be due Contractor for that Work. The Contract Sum, including all applicable taxes, authorized by County hereunder shall not exceed Four Hundred Twelve Thousand Nine Hundred Twenty Seven Dollars (\$412,927) as further detailed in Exhibit C (Payment Schedule), unless the Contract Sum is modified pursuant to a duly approved Amendment to this Agreement by County’s and Contractor’s authorized representative(s) pursuant to Paragraph 4 (Changes Notices and Amendments). The Contract Sum under this Agreement shall cover the authorized payments for all System components provided by Contractor, Implementation Services, System Maintenance and any Optional Work.

Contractor shall maintain a system of record keeping that will allow Contractor to determine when it has incurred seventy-five percent (75%) of the Contract Sum, including the Pool Dollars expenditures, authorized for this Agreement. Upon occurrence of this event, Contractor shall provide written notification to County’s Project Director at the address set forth in Section 1 (County Key Personnel) in Exhibit E (Administration of Agreement). Notwithstanding the foregoing, Contractor’s failure to provide such notification shall not constitute a material breach of this Agreement.

8.2 **SYSTEM IMPLEMENTATION**

8.2.1 **IMPLEMENTATION SERVICES**

Contractor shall provide the License for all Software, including Application Software and Third Party Software, and Implementation Services, including Baseline Interfaces and Baseline Customizations, if any, in accordance with Exhibit A (Statement of Work), with all Attachments thereto, and the Base Agreement at no cost to County.

8.2.2 INTENTIONALLY OMITTED

8.2.3 TERMINATION

If any Key Deliverable is not completed within thirty (30) days after the applicable Due Date, and thereafter approved in writing by County pursuant to Paragraph 2.4 (Approval of Work), other than as a result of delays caused by acts or omissions of County as determined by Director in his/her reasonable judgment and for which a notice of delay has been delivered in accordance with Paragraph 68 (Notice of Delays), and unless County's Project Director and Contractor's Project Director have otherwise agreed in writing prior to such date scheduled for completion, then County may, upon notice to Contractor, terminate this Agreement for default in accordance with Paragraph 20 (Termination for Default) or for convenience in accordance with Paragraph 21 (Termination for Convenience), as determined in the sole discretion of County, subject to the cure provisions set forth in Paragraph 20 (Termination for Default).

8.3 SYSTEM MAINTENANCE

Contractor shall, during the term of this Agreement, provide to County System Maintenance services, including Maintenance Services and Support Services, in exchange for County's payment of the applicable Maintenance Fees set forth in Exhibit C (Payment Schedule), with all Schedules thereto. Unless otherwise agreed to by the parties, Maintenance Fees will be paid by County to Contractor monthly in arrears for Maintenance Periods commencing upon the applicable Phase Acceptance and shall not exceed the amounts specified in Exhibit C (Payment Schedule).

8.4 OPTIONAL WORK

Upon County's request for Optional Work and mutual agreement, Contractor shall provide to County Optional Work using Pool Dollars in accordance with the agreed upon Maximum Fixed Priced and the Scope of Work, as specified in Paragraph 5.4 (Optional Work). Contractor's rates for Optional Work shall be subject to the applicable pricing terms set forth in Exhibit C (Payment Schedule) for the term of this Agreement. Any Optional Work provided by Contractor shall not cause an increase in the Maintenance Fees under this Agreement with the exception of any Additional Software procured as part of Additional Products. Absent an Amendment in accordance with Paragraph 4 (Changes Notices and Amendments), the Pool Dollars are the aggregate amount available during the term of this Agreement for Optional Work requested and provided following First Productive Use.

8.5 NON-APPROPRIATION OF FUNDS

County's obligation may be limited if it is payable only and solely from funds appropriated for the purpose of this Agreement. Notwithstanding any other provision of this Agreement, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until County's Board of Supervisors appropriates funds for this Agreement in County's budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then County shall, at its sole discretion, either (i) terminate this Agreement as of June 30 of the last fiscal year for which funds were appropriated or (ii) reduce the Work provided hereunder in accordance with the funds appropriated, as mutually agreed to by the parties. County will notify Contractor in writing of any such non-appropriation of funds at its election at the earliest possible date. In the event of such a termination, Contractor shall be entitled to seek payment for Deliverables completed by Contractor and approved by County in accordance

with this Agreement prior to the effective date of such termination.

8.6 COUNTY'S OBLIGATION FOR FUTURE FISCAL YEARS

In the event that County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for the reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, County reserves the right to reduce its payment obligation under this Agreement correspondingly for that fiscal year and any subsequent fiscal year during the term of this Agreement (including any extensions), and the services to be provided by Contractor under this Agreement shall also be reduced correspondingly. County's notice to the Contractor regarding said reduction in payment obligations shall be provided within thirty (30) calendar days of the Board of Supervisors' approval of such actions. Except as set forth in the preceding sentence, Contractor shall continue to provide all of the services set forth in this Agreement.

9. **INVOICES AND PAYMENTS**

9.1 INVOICES

Contractor shall invoice County in accordance with Exhibit C (Payment Schedule) (1) for System Maintenance, by payment of the applicable Maintenance Fees for Maintenance Periods commencing upon the applicable Phase Acceptance; and (2) for all Optional Work, on a per Change Notice basis, by payment of the actual price expended by Contractor for the provision of Optional Work, not to exceed the Maximum Fixed Price quoted for such Optional Work following Contractor's completion and County's written approval of the Optional Work.

9.1.1 SUBMISSION OF INVOICES

Contractor's invoice shall include the charges owed to Contractor by County under the terms of this Agreement as provided in Exhibit C (Payment Schedule). All invoices and supporting documents under this Agreement shall be submitted to the person designated in Section 1 (County Key Personnel) of Exhibit F (Administration of Agreement) as County's Project Manager at the address specified in such Section 1 (County Key Personnel) of Exhibit F (Administration of Agreement).

9.1.2 INVOICE DETAILS

Each invoice submitted by Contractor shall indicate, at a minimum:

1. Agreement Name and Number;
2. The tasks, subtasks, deliverables, goods, services or other Work for which payment is claimed, including Implementation Services Deliverable, System Maintenance and Optional Work;
3. The price of such tasks, subtasks, deliverables, goods, services or other Work calculated based on the pricing terms set forth in Exhibit C (Payment Schedule) or any Change Notice, as applicable.
4. The date of written approval of the tasks, subtasks, deliverables, goods, services or other Work by County's Project Director or designee;
5. Indication of any applicable withhold or holdback amounts for payments claimed or reversals thereof;
6. Indication of any applicable credits due County under the terms of this Agreement or

reversals thereof;

7. A copy of any applicable Acceptance certificates signed by County's Project Director and County's Project Manager; and
8. Any other information required by County's Project Director.

9.1.3 APPROVAL OF INVOICES

All invoices submitted by Contractor to County for payment shall have County's written approval as provided in this Paragraph 9.1, which approval shall not be unreasonably withheld. In no event shall County be liable or responsible for any payment prior to such written approval.

9.1.4 INVOICE DISCREPANCIES

County's Project Director will review each invoice for any discrepancies and will, within thirty (30) days of receipt thereof, notify Contractor in writing of any discrepancies found upon such review and submit a list of disputed charges. Contractor shall review the disputed charges and send a written explanation detailing the basis for the charges within thirty (30) days of receipt of County's notice of discrepancies and disputed charges. If County's Project Director does not receive a written explanation for the charges within such thirty (30) day period, Contractor shall be deemed to have waived its right to justify the original invoice amount, and County shall pay such amount in satisfaction of the disputed invoice and shall not be obligated to pay the disputed amount applicable to that invoice.

All County correspondence relating to invoice discrepancies shall be sent by email, followed by hard copy, directly to County's Project Manager with a copy to County's Project Director at the addresses specified in Section 1 (County Key Personnel) of Exhibit F (Administration of Agreement).

9.2 DELIVERY OF SYSTEM SOFTWARE

It is in the intent of the parties that all System Software and Documentation provided by Contractor under this Agreement, including any product of System Maintenance services and any Optional Work, shall be delivered (i) solely in electronic format (e.g., via electronic mail or internet download), or (ii) personally by Contractor staff who shall load such System Software and Documentation onto County's hardware but who will retain possession of all originals and copies of such tangible media (e.g., CD-ROM, magnetic tape, printed manuals) used to deliver the System Software and Documentation to County.

Any System Software and Documentation that is provided or delivered by Contractor to County in a tangible format shall be F.O.B. Destination. The Contract Sum shown in Paragraph 8.1 (Maximum Contract Sum) includes all amounts necessary for County to reimburse Contractor for all transportation and related insurance charges, if any, on System Software Components and Documentation procured by County from Contractor pursuant to this Agreement. All transportation and related insurance charges, if any, shall be paid directly by Contractor to the applicable carrier. Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless County from, any and all such transportation and related insurance charges.

9.3 SALES/USE TAX

The Contract Sum shown in Paragraph 8 (Contract Sum) shall be deemed to include all amounts necessary for County to reimburse Contractor for all applicable California and other

state and local sales/use taxes on all System components provided by Contractor to County pursuant to or otherwise due as a result of this Agreement, including, but not limited to, the product of System Maintenance and any Optional Work, to the extent applicable. All California sales/use taxes shall be paid directly by Contractor to the State or other taxing authority.

Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless County from, any and all such California and other state and local sales/use taxes. Further, Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless County from, all applicable California and other state and local sales/use tax on all other items provided by Contractor pursuant to this Agreement and shall pay such tax directly to the State or other taxing authority. In addition, Contractor shall be solely responsible for all taxes based on Contractor's income or gross revenue, or personal property taxes levied or assessed on Contractor's personal property to which County does not hold title.

9.4 **PAYMENTS**

Provided that Contractor is not in under any provision of this Agreement, County will pay all invoice amounts to Contractor within thirty (30) days of receipt of invoices that have not been disputed in accordance with Paragraph 9.1.4 (Invoice Discrepancies) above. County's failure to pay within the thirty (30) day period, however, shall not be deemed as automatic invoice approval or Acceptance by County of any deliverable for which payment is sought, nor shall it entitle Contractor to impose an interest on any late payment.

9.5 **COUNTY'S RIGHT TO WITHHOLD PAYMENT**

Notwithstanding any other provision of this Agreement, and in addition to any rights of County given by law or provided in this Agreement, County may upon written notice to Contractor withhold payment for any deliverable while Contractor, with no fault of County, is in default hereunder or default related to Work.

10. SYSTEM OWNERSHIP AND LICENSE

10.1 **SYSTEM OWNERSHIP**

10.1.1 **SYSTEM ENVIRONMENT**

Contractor acknowledges that County, or the rightful owner, owns all System Environment components provided by County, including System Hardware, System Software and County Software, as specified in Attachment A.2 (System Architecture).

10.1.2 **SOFTWARE**

All Software provided by Contractor to County pursuant to this Agreement, including Application Software and Third Party Software, and related Documentation, is and shall remain the property of Contractor or any rightful third party owner, with which all Proprietary Rights shall reside, and which shall be subject to the terms of the License granted pursuant to Paragraph 10.2 (License) below.

10.1.3 **SYSTEM DATA**

All System Data provided or made accessible by County to Contractor is and shall remain the property of County.

10.1.4 WORK PRODUCT

Contractor, or the rightful owner, shall remain the sole owner of Contractor's Software, including the Application Software and Third Party Software, and all derivative works therein (hereinafter collectively "Work Product"). Work Product does not include any County Materials previously owned by County or designed or developed by Contractor for County.

10.2 LICENSE

10.2.1 LICENSE GRANT

Subject to the provisions of Paragraph 10.1 (System Ownership), Contractor hereby grants to County a perpetual, irrevocable, non-exclusive license to use the Software and Work Products, including any related Documentation (hereinafter "License"), by all Users in accordance with the scope set forth in Paragraph 10.2.3 (Scope of License) and subject to the restrictions set forth in Paragraph 10.2.4 (License Restrictions) during the term specified in Paragraph 10.2.2 (License Term). Notwithstanding the foregoing, upon mutual agreement of the parties, County may obtain its own license for any Third Party Software, the term and scope of which shall be subject to the terms of County's agreement with the provider of such Third Party Software.

10.2.2 LICENSE TERM

The License granted under this Agreement shall commence upon the earlier of the delivery of a first Software component to County or the Effective Date and shall continue in perpetuity and without regard to the end of the term of this Agreement, unless otherwise specified herein.

10.2.3 SCOPE OF LICENSE

The License granted by Contractor under this Agreement provides County with the following rights:

1. To use, install, integrate with other software, operate and execute the Software in the System Environment on an unlimited number of computers, servers, local area networks and wide area networks, including web connections, by an unlimited number of Users in the conduct of the business of County as provided in the Agreement for the County Pharmacies listed in Attachment A.4 (County Pharmacies);
2. To use, modify, copy, translate and compile the Software after such time as one of the Release Conditions described in Paragraph 10.3.3 (Source Code Release Conditions) has occurred which would permit County to use the Source Code as provided in this Paragraph 10.2.3 and Paragraph 10.3 (Source Code) below;
3. To use, modify, copy and display the Documentation, including but not limited to Software and User manuals, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License;
4. To permit third party access to the Software, the Documentation, the Source Code, or any part thereof, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License, including for the provision of System Maintenance, Application Modifications, Professional Services or other business use or support of the System as contemplated by this Agreement; provided, however, without limiting County's rights under this Paragraph 10.2.4(4), County covenants and agrees that

it shall not exercise any of the rights contained in this Paragraph 10.2.4(4) unless and until the occurrence of any one of the Release Conditions; and

5. Pursuant to Paragraph 52 (Assignment by County), by County and permitted assignees consistent with the terms of this Agreement.

10.2.4 LICENSE RESTRICTIONS

County acknowledges and agrees (i) that the Software provided by Contractor to County under the Agreement, including related Documentation, is the confidential and copyrighted property of Contractor, or its licensors, and all rights therein not expressly granted to County are reserved to Contractor, or its licensors, as applicable; and (ii) that Contractor, or its licensors, retain all Proprietary Rights in and to the foregoing. Subsequently, County's License to the Software provided by Contractor hereunder is limited by the restrictions set forth in this Paragraph 10.2.4. County will not:

1. Reverse engineer, disassemble or decompile the Software provided by Contractor;
2. Transfer, sublicense, rent, lease, convey or assign (unless resulting from an Agreement assignment under Paragraph 52 (Assignment by County)) the Software provided by Contractor;
3. Copy or reproduce the Software provided by Contractor in any way except as reasonably necessary for backup, archival or business continuity purposes;
4. Use the Software provided by Contractor on a timesharing, service bureau, subscription service or rental basis for any third party; or
5. Remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on, or during the use of, the Software provided by Contractor.

10.3 SOURCE CODE

10.3.1 SOURCE CODE ESCROW

Upon the Effective Date, but no later than Contractor commences any Work hereunder, Contractor shall have established, at no cost to County, a source code escrow with a nationally recognized source code escrow company (hereinafter "Escrow Agent"). A copy of the Source Code Escrow Agreement shall be attached to and incorporated by reference into this Agreement as Exhibit K (Source Code Escrow Agreement). Contractor shall deposit with the Escrow Agent the Source Code for all Software, to the extent available, that is utilized by Contractor for the System under this Agreement, including the Core Application, Interfaces, Third Party Application, Customizations and Application Modifications. Contractor shall update the Source Code by depositing with the Escrow Agent the Source Code for all Application Modifications, including, but not limited to, Software Modifications, Additional Software, Updates, Replacement Products, if any, and any other modifications or enhancements to the deposited Software and any Software newly licensed or developed for the purpose of this Agreement. Contractor's duty to update the Source Code shall continue through the term of this Agreement.

Contractor's duty to maintain a Source Code Escrow Agreement and to deposit the Source Code with Escrow Agent shall continue throughout the term of this Agreement, unless one of the Release Conditions occurs which would permit County to obtain and use the Source Code in accordance with the terms of this Paragraph 10.3. Contractor may, by written notice to County, change the Escrow Agent for the Source Code under this Agreement. Any such

change shall be accomplished by a Change Notice in accordance with Paragraph 4 (Changes Notices and Amendments) above and shall not modify Contractor's obligations or County's rights with respect to the Source Code under this Agreement.

10.3.2 INTENTIONALLY OMITTED

10.3.3 SOURCE CODE RELEASE CONDITIONS

In addition to the conditions for release of Source Code identified in the Source Code Escrow Agreement, Contractor shall cause the release of the Source Code to County, and County shall have the right to immediately begin using the Source Code, as provided in Paragraph 10.3.5 (Possession and Use of Source Code), at no charge to County, upon the occurrence of the following events (collectively with the release conditions identified in the Source Code Escrow Agreement "Release Condition(s)"):

1. The insolvency of Contractor, including as set forth in Paragraph 23 (Termination for Insolvency); or
2. Contractor ceasing to maintain or support the current version or the last two (2) prior Version Releases of the Software for reasons other than County's failure to pay for, or election not to receive, Contractor's System Maintenance services, and no other qualified entity assuming the obligation to provide such System Maintenance services, which may result in County's termination of the Agreement for default in accordance with Paragraph 20 (Termination for Default); or
3. Successor ceasing to do business with County with respect to this Agreement.

Upon occurrence of any of the Release Conditions, Contractor shall instruct the Escrow Agent to release the Source Code to County. In addition to the foregoing, County alone may file for release of the Source Code if it believes in good faith that a Release Condition has occurred, subject to the provisions of the Source Code Escrow Agreement.

10.3.4 COUNTY'S RIGHT TO VERIFY SOURCE CODE

Regardless of whether one of the Release Conditions occurs, County shall have the right to verify the relevance, completeness, currency, accuracy, and functionality of the deposited Source Code by, among other things, compiling the Source Code and performing test runs for comparison with the applicable Software. In the event such testing demonstrates the Source Code does not correspond to the applicable Software, Contractor shall reimburse County for all costs and fees incurred in the testing and immediately deposit the correct Source Code with the Escrow Agent.

10.3.5 POSSESSION AND USE OF SOURCE CODE

Upon the occurrence of a Release Condition, County will be entitled to obtain a copy of such Source Code from the Escrow Agent pursuant to the terms of the Source Code Escrow Agreement. County shall be entitled to use the Source Code as needed to remedy the event of release and mitigate any damages arising from such event, provided that mitigation of damages shall not include the sale or sublicense of the Source Code. Such use will include, but is not limited to, County's right to perform its own support and maintenance, alter or modify the Source Code and/or obtain the benefits sought under this Agreement, subject to the limitations of Paragraph 10.3.6 (Proprietary Rights) below.

10.3.6 PROPRIETARY RIGHTS

Subject to the provisions of Paragraph 10.3.5 (Possession and Use of Source Code) and

County's License to, and Contractor's ownership of, the Software as provided in Paragraph 10.1 (System Ownership), Source Code obtained by County under the provisions of this Agreement shall remain subject to every license restriction, proprietary rights protection and other County obligation specified in this Agreement, provided, however, County may make such Source Code available to third parties as needed to assist it in making authorized use of the Software and provided such third party has first entered into a written agreement containing restrictions at least as protective of the Source Code as this Agreement. Should use of the Source Code as provided in this Paragraph 10.3.6 involve the use or practice of any patent, copyright, trade secret, trademark or other proprietary information in which Contractor has an interest, Contractor, on behalf of itself and its assignees and successors, agrees not to assert a claim for patent, copyright, trade secret, trademark or other proprietary information infringement against County or any User provided use of Software and Source Code is in accordance with this Agreement.

10.3.7 SOURCE CODE ESCROW AGREEMENT AMENDMENT

As between County and Contractor, this Paragraph 10.3 shall constitute an amendment to the Source Code Escrow Agreement and incorporate all of the Release Conditions identified in Paragraph 10.3.3 (Source Code Release Conditions) above.

11. SYSTEM ACCEPTANCE

11.1 SYSTEM TESTS

County and/or Contractor, as applicable, shall conduct all tests (hereinafter "System Test(s)") specified in this Paragraph in Exhibit A (Statement of Work), including without limitation Reliability Test, Integrated Functional Test and System Performance Test.

11.2 PRODUCTION USE

The System shall achieve First Productive Use and be ready for Production Use when County's Project Director, or his/her designee, approves in writing Deliverable 3.3.1 (System in Production Use) of Exhibit A (Statement of Work).

11.3 PHASE ACCEPTANCE

The System shall achieve Phase Acceptance for a County Facility when County's Project Director, or his/her designee, approves in writing Deliverable 3.3.2 (Performance Verification Report) of Exhibit A (Statement of Work).

11.4 FINAL ACCEPTANCE

The System shall achieve Final Acceptance when County's Project Director, or his/her designee, approves in writing Deliverable 3.3.2 (Performance Verification Report) of Exhibit A (Statement of Work), after achieving Phase Acceptance of the last County Facility implemented.

11.5 FAILED TESTING

- 11.5.1 If County's Project Director makes a good faith determination at any time that the System as a whole, or any component thereof, has not successfully completed a System Test or has not achieved Phase Acceptance or Final Acceptance (collectively referred to for purposes of this Paragraph 11.5 as "Designated Test"), County's Project Director shall promptly notify Contractor in writing of such failure, specifying with as much detail as possible the manner in which the System component or the System failed to pass the applicable Designated Test. Contractor shall immediately commence all reasonable efforts to complete, as quickly as

possible, such necessary corrections, repairs and modifications to the System component or the System as will permit the System component or the System to be ready for retesting. Contractor shall notify County's Project Director in writing when such corrections, repairs and modifications have been completed, and the applicable Designated Test shall begin again. If, after the applicable Designated Test has been completed for a second time, County's Project Director makes a good faith determination that the System component or the System again fails to pass the applicable Designated Test, County's Project Director shall promptly notify Contractor in writing, specifying with as much detail as possible the manner in which the System component or the System failed to pass the applicable Designated Test. Contractor shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the System component or the System as will permit the System component or the System to be ready for retesting.

- 11.5.2 Such procedure shall continue, subject to County's rights under Paragraph 8.2.3 (Termination) in the event Contractor fails to timely complete any Key Deliverable until such time as County notifies Contractor in writing either: (i) of the successful completion of such Designated Test or (ii) that County has concluded, subject to the Dispute Resolution Procedure, that satisfactory progress toward such successful completion of such Designated Test is not being made, in which latter event, County shall have the right to make a determination, which shall be binding and conclusive on Contractor, that a non-curable default has occurred and to terminate this Agreement in accordance with Paragraph 20 (Termination for Default) on the basis of such non-curable default. In the event Contractor, using good faith effort, is unable to cure a deficiency by re-performance after two (2) attempts, County and Contractor will work together to agree on a mutually acceptable resolution, provided that if County and Contractor cannot agree on a resolution, County will terminate this Agreement for default pursuant to Paragraph 20 (Termination for Default).
- 11.5.3 Such a termination by County shall be subject to the Dispute Resolution Procedure, either, as determined by County in its sole judgment: (i) a termination with respect to one or more of the components of the System; or (ii) if County believes the failure to pass the applicable Designated Test materially affects the functionality, performance or desirability to County of the System as a whole, the entire Agreement. In the event of a termination under this Paragraph 11.5, County shall have the right to receive from Contractor reimbursement of all payments made to Contractor by County under this Agreement for the System component(s) and related Deliverables as to which the termination applies, or, if the entire Agreement is terminated, all amounts paid by County to Contractor under this Agreement. If the termination applies only to one or more System component(s), at County's sole option, any reimbursement due to it may be credited against other sums due and payable by County to Contractor. The foregoing is without prejudice to any other rights that may accrue to County or Contractor under the terms of this Agreement or by law.

12. WARRANTIES AND CORRECTION OF DEFICIENCIES

12.1 SYSTEM WARRANTIES

Contractor hereby warrants to County that the Software shall be free from any and all Major Deficiencies commencing from First Productive Use and continuing through each Phase Acceptance (Warranty Period) until Final Acceptance. All Deficiencies reported or discovered shall be corrected in accordance with Exhibit B (System Maintenance) and shall be at no cost to County during the Warranty Period. Contractor shall also meet all of the warranties set forth in Exhibit B (System Maintenance), including but not limited to general

warranties, System warranties and System Performance warranty, through the term of the Agreement.

12.2 PROBLEM RESOLUTION

Provided that County is covered by System Maintenance as provided in this Agreement, any non-conformances, breaches of warranties specified herein and other Deficiencies reported and discovered during the term of the Agreement shall be corrected in accordance with Exhibit B (System Maintenance).

12.3 CONTINUOUS PRODUCT SUPPORT

12.3.1 In the event that Contractor replaces any or all components of the Software with other software modules or components (hereinafter "Replacement Product") during the Initial Term of the Agreement in order to fulfill its obligations under the Agreement and to meet the System Requirements, then the License shall be deemed to automatically include such Replacement Product without cost or penalty to County even if such Replacement Product contains greater functionality than the Software it replaced. If required by County, Contractor shall provide the necessary training to County personnel to utilize the Replacement Product at no cost to County.

12.3.2 In the event any or all components of the Software are migrated to the Replacement Product as a result of an acquisition, sale, assignment, transfer or other change in control of Contractor, then any assignee or successor, by taking benefit (including, without limitation, acceptance of any payment under this Agreement), shall be deemed to have ratified this Agreement. All terms and conditions of this Agreement shall continue in full force and effect for the Replacement Product.

12.3.3 The following terms and conditions shall apply if County elects to transfer the License to a Replacement Product:

1. Contractor, or its assignee or successor, shall, at no cost to County, implement the Replacement Product in the System Environment including the Client Environment where the Client Application may reside, convert and migrate all of the System Data from the Software format to the Replacement Product format to ensure Production Use of such Replacement Product;
2. Any prepaid Maintenance Fees for the System shall transfer in full force and effect for the balance of the Replacement Product's maintenance and support term (or equivalent service) at no additional cost. If the prepaid amount is greater than the Replacement Product's maintenance and support fees for the same term, the credit balance shall be applied to future Maintenance Fees or returned to County, at County's option;
3. Any and all modules offered separately and needed to match the original Software's level of functionality shall be supplied by Contractor, or its assignee or successor, without additional cost or penalty, and shall not affect the calculation of any Annual Fees;
4. Contractor shall provide to County the necessary System Training for purposes of learning the Replacement Product. Such training shall be provided at no cost to County;
5. All License terms and conditions, at a minimum, shall remain as granted herein with no additional fees imposed on County; and
6. The definition of Software shall include the Replacement Product.

12.4 **WARRANTY PASS-THROUGH**

Contractor shall assign to County to the fullest extent permitted by law or by this Agreement, and shall otherwise ensure that the benefits of any applicable warranty or indemnity offered by any manufacturer of any System component or any other product or service provided hereunder shall fully extend to and be enjoyed by County.

12.5 **REMEDIES**

County's remedies under the Agreement for the breach of the warranties set forth in this Agreement, including Exhibit B (System Maintenance), will be limited to the repair or replacement by Contractor, at its own expense, of the non-conforming System components and the specific remedies set forth in Exhibit B (System Maintenance) and any other corrective measures specified in Exhibit B (System Maintenance) and this Agreement.

12.6 **BREACH OF WARRANTY OBLIGATIONS**

Failure by Contractor to timely perform its obligations set forth in this Paragraph 12 shall constitute a material breach, upon which, in addition to County's other rights and remedies set forth herein, County may, after written notice to Contractor and provision of a reasonable cure period, terminate this Agreement in accordance with Paragraph 20 (Termination for Default).

12.7 **DISCLAIMER OF WARRANTIES**

Except as otherwise provided herein, Contractor expressly disclaims all warranties not expressly specified anywhere in this Agreement, including the implied warranty of merchantability or fitness for a particular purpose or any warranties arising as a result of custom or usage in the trade or by course of dealing.

13. INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless County, its Special Districts, elected and appointed officers, employees, and agents, from and against any and all third party Claims, liabilities, actions, fees, costs, and expenses (including reasonable attorney and expert witness fees), arising from or connected with Contractor's acts and/or omissions arising from or relating to this Agreement.

Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 13 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County (which approval shall not be unreasonably withheld) in writing.

Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a fully and adequate defense, as required by law or this Agreement, County shall be entitled to reimbursement for all such costs and expenses.

14. INSURANCE AND PERFORMANCE SECURITY

14.1 **GENERAL INSURANCE REQUIREMENTS**

Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Paragraph 14. These minimum insurance coverage terms, types and limits ("Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Agreement. County in no

way warrants that the Required Insurance is sufficient to protect Contractor for liabilities which may arise from or relate to this Agreement.

14.2 EVIDENCE OF COVERAGE AND NOTICE

- 14.2.1 Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Agreement.
- 14.2.2 Renewal Certificates shall be provided to County not less than ten (10) days after renewal of Contractor's policy. County reserves the right to obtain copies of relevant sections of any required Contractor and/or subcontractor insurance policies at any time.
- 14.2.3 Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, and its financial rating.
- 14.2.4 Neither County's failure to obtain, nor County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to County's Project Director at the address specified in Section 1 (County Key Personnel) of Exhibit F (Administration of Agreement).

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Such report shall be made in writing within twenty-four (24) hour or the next Business Day after being notified. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its subcontractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

14.3 ADDITIONAL INSURED STATUS AND SCOPE OF COVERAGE

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to Contractor or to County. The full policy limits and scope of protection also shall apply to County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

14.3.1 CANCELLATION OF INSURANCE

Except in the case of cancellation for non-payment of premium, Contractor shall provide, and County shall receive, not less than thirty (30) days advance written notice by mail of any cancellation of the Required Insurance. Ten (10) days prior notice may be given to County in event of cancellation for non-payment of premium.

14.3.2 INSURER FINANCIAL RATINGS

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County .

14.3.3 CONTRACTOR 'S INSURANCE SHALL BE PRIMARY

Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

14.3.4 WAIVERS OF SUBROGATION

To the fullest extent permitted by law, Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

14.3.5 SUBCONTRACTOR INSURANCE COVERAGE REQUIREMENTS

Contractor shall include all subcontractors as insureds under Contractor's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein, and shall require that each subcontractor name the County and Contractor as additional insureds on the subcontractor's General Liability policy. Contractor shall obtain County's prior review and approval of any subcontractor request for modification of the Required Insurance.

14.3.6 DEDUCTIBLES AND SELF-INSURED RETENTIONS (SIRs)

Contractor's policies shall not obligate County to pay any portion of any Contractor deductible or SIR.

14.3.7 CLAIMS MADE COVERAGE

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

14.3.8 APPLICATION OF EXCESS LIABILITY COVERAGE

Contractor may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

14.3.9 SEPARATION OF INSUREDs

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no

insured versus insured exclusions or limitations

14.3.10 ALTERNATIVE RISK FINANCING PROGRAMS

County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. County and its Agents shall be designated as an Additional covered Party under any approved program.

14.3.11 COUNTY REVIEW AND APPROVAL OF INSURANCE REQUIREMENTS

The County reserves the right to review and adjust the required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

14.4 INSURANCE COVERAGE

14.4.1 COMMERCIAL GENERAL LIABILITY INSURANCE

14.4.2 Providing scope of coverage equivalent to ISO policy form CG 00 01, naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate	\$2 million
Products/Completed Operations Aggregate	\$1 million
Personal and Advertising Injury	\$1 million
Each Occurrence	\$1 million

14.4.3 AUTOMOBILE LIABILITY INSURANCE

Providing scope of coverage equivalent to ISO policy form CA 00 01 with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

14.4.4 WORKERS' COMPENSATION AND EMPLOYERS' INSURANCE

Insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident.

14.4.5 PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS

Insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

14.4.6 PROPERTY COVERAGE

If Contractor's given exclusive use of County owned or leased property shall carry property, Contractor coverage at least as broad as that provided by the ISO special causes of loss (ISO policy form CP 10 30) form. County and its Agents shall be named as an Additional Insured and Loss Payee on Contractor's insurance as its interests may appear. Automobiles and mobile equipment shall be insured for their actual cash value. Real property and all other personal property shall be insured for their full replacement value.

14.5 **FAILURE TO MAINTAIN COVERAGE**

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor and/or suspend this Agreement.

15. INTELLECTUAL PROPERTY WARRANTY AND INDEMNIFICATION

- 15.1 Contractor represents and warrants: (i) that Contractor has the full power and authority to grant the License, ownership and all other rights granted by this Agreement to County; (ii) that no consent of any other person or entity is required by Contractor to grant such rights other than consents that have been obtained and are in effect; (iii) that County is entitled to use the System without interruption, subject only to County's obligation to make the required payments and observe the License terms under this Agreement; (iv) that this Agreement and the System licensed or acquired herein, are neither subject to any liens, encumbrances, or pledges nor subordinate to any right or claim of any third party, including Contractor's creditors; (v) that during the term of this Agreement, Contractor shall not subordinate this Agreement or any of its rights hereunder to any third party without the prior written consent of County, and without providing in such subordination instrument for non-disturbance of County's use of the System (or any part thereof) in accordance with this Agreement; and (vi) that neither the performance of this Agreement by Contractor, nor the License to or ownership by, and use by, County and its Users of the System in accordance with this Agreement will in any way violate any non-disclosure agreement, nor constitute any infringement or other violation of any copyright, trade secret, trademark, service mark, patent, invention, proprietary information, or other rights of any third party.
- 15.2 Contractor shall indemnify, defend, and hold harmless the County its Special Districts, elected and approved officers, employees and agents (collectively referred to for purposes of this Paragraph 13 as "County") from and against any and all third party Claims, liabilities, actions, fees, damages, costs, and expenses (including reasonable attorneys and expert witness fees) arising from any alleged or actual infringement of any third party's United States patent or copyright, or any alleged or actual unauthorized trade secret disclosure, arising from or related to this Agreement and/or the operation and use of the System (collectively hereinafter for purposes of this Paragraph 13 as "Infringement Claim(s)"). Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 15.2 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County (which approval shall not be unreasonably withheld) in writing. County shall provide Contractor with information, reasonable assistance, and authority to defend or settle the claim. Notwithstanding the foregoing, County shall have the right to participate in any such defense at its sole cost and expense.
- 15.3 County shall notify Contractor, in writing, as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure. Upon such notice by County, Contractor shall, at no cost to County, as remedial measures, either: (i) procure the right, by license or otherwise, for County to continue to use the System or affected component(s) thereof, or part(s) thereof, to the same extent of County's License or ownership rights under this Agreement; or (ii) to the extent procuring such right to use the System is not commercially reasonable, replace or modify the System or component(s) thereof with another software or component(s) thereof of at least equivalent quality and performance capabilities, as mutually determined by County and Contractor until the System and all components thereof become non-infringing, non-misappropriating and non-disclosing (hereinafter

collectively for the purpose of this Paragraph 15.3 “Remedial Act(s)”).

- 15.4 If Contractor fails to complete the Remedial Acts described in Paragraph 15.3 above then, County may terminate this Agreement for default pursuant to Paragraph 20 (Termination for Default).
- 15.5 Unless and until County terminates this Agreement for default in accordance with the terms of this Agreement, County’s rights under this Paragraph 15 shall constitute County’s sole and exclusive remedy to enforce Contractor’s indemnification obligations set forth in this Paragraph 15.

16. PROPRIETARY CONSIDERATIONS

16.1 COUNTY MATERIALS

Contractor and County agree that all materials, plans, reports, Project Schedule, Project Control Document, documentation and training materials developed by or solely for County, departmental procedures and processes, algorithms and any other information provided by County or specifically provided by Contractor for County pursuant to this Agreement, excluding the Work Product and Software provided by Contractor and related Documentation (collectively “County Materials”), and all copyrights, patent rights, trade secret rights and other proprietary rights therein shall be the sole property of County. Contractor hereby assigns and transfers to County all of Contractor’s right, title, and interest in and to all such County Materials, provided that notwithstanding such County ownership, Contractor may retain possession of all working papers prepared by Contractor, provided that such working papers are maintained in accordance with Paragraph 29 (Records and Audits).

16.2 TRANSFER TO COUNTY

Upon request of County, Contractor shall execute all documents requested by County and shall perform all other reasonable acts requested by County to assign and transfer to, and vest in, County all Contractor’s right, title and interest in and to the County Materials, including, but not limited to, all copyright, patent and trade secret rights. County shall have the right to register all copyrights and patents in the name of County of Los Angeles. All material expense of effecting such assignment and transfer of rights shall be borne by County. Further, County shall have the right to assign, license or otherwise transfer any and all County’s right, title and interest, including, but not limited to, copyrights and patents, in and to the County Materials.

16.3 CONTRACTOR’S OBLIGATIONS

Contractor shall protect the security of and keep confidential all County Materials and shall use whatever security measures are reasonably necessary to protect all such County Materials from loss or damage by any cause, including fire and theft.

16.4 PROPRIETARY AND CONFIDENTIAL

All Work Product that Contractor desires to use hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to County’s Project Director as proprietary or confidential and shall be plainly and prominently marked by Contractor as “PROPRIETARY” or “CONFIDENTIAL”, if applicable. Contractor hereby grants to County a license to use all of Contractor’s Work Product not expressly referenced in the License granted under Paragraph 10.2 (License).

Notwithstanding any other provision of this Agreement, County shall not be obligated in any

way under this Agreement for:

1. Any disclosure of any materials which County is required to make under the California Public Records Act or otherwise by law; or
2. Any Contractor's proprietary and/or confidential materials not plainly and prominently marked with restrictive legends.

17. DISCLOSURE OF INFORMATION

Contractor shall not disclose any details in connection with this Agreement to any person or entity except as may be otherwise provided herein or required by law. However, in recognizing Contractor's need to identify its services and related clients to sustain itself, County shall not inhibit Contractor from publicizing its role under this Agreement under the following conditions:

1. Contractor shall develop all publicity material in a professional manner; and
2. During the term of this Agreement, Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of County without the prior written consent of County's Project Director for each such item. County will not unreasonably withhold written consent.

Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Agreement with the County of Los Angeles, provided that the requirements of this Paragraph 17 shall apply.

18. CONFIDENTIALITY AND SECURITY

18.1 CONFIDENTIALITY

18.1.1 CONFIDENTIAL INFORMATION

Each party shall protect, secure and keep confidential all records, materials, documents, data and/or other information, including, but not limited to, billing and sensitive financial information, County and DHS records, data and information, County Materials, System Data, Work Product, Software, external system Interfaces, health information and any other data, records and information, received, obtained and/or produced under the provisions of this Agreement (hereinafter "Confidential Information"), in accordance with the terms of this Agreement and all applicable Federal, State or local laws, regulations, ordinances, and publicly known guidelines and directives relating to confidentiality. As used in this Agreement, the term "Confidential Information" shall also include records, materials, data and information deemed confidential by County or the applicable law under Paragraph 3.6 (Rules and Regulations). Each party shall use whatever appropriate security measures are necessary to protect such Confidential Information from loss, damage and/or unauthorized dissemination by any cause, including but not limited to fire and theft.

Contractor shall inform all of its officers, employees, agents and subcontractors providing Work hereunder of the confidentiality provisions of this Agreement. Contractor shall ensure that all of its officers, employees, agents and subcontractors performing Work hereunder have entered into confidentiality agreements no less protective of County than the terms of this Agreement, including this Paragraph 18 and Exhibit G (Confidentiality and Assignment Agreement).

18.1.2 DISCLOSURE

With respect to any of County's Confidential Information or any other records, materials, data or information that is obtained by Contractor (hereinafter collectively for the purpose of this Paragraph 18.1.2 "information"), Contractor shall: (i) not use any such information for any purpose whatsoever other than carrying out the express terms of this Agreement; (ii) promptly transmit to County all requests for disclosure of any such information; (iii) not disclose, except as otherwise specifically permitted by this Agreement, any such information to any person or organization other than County without County's prior written authorization that the information is releasable; and (iv) at the expiration or termination of this Agreement, return all such information to County or maintain such information according to the written procedures provided to Contractor by County for this purpose.

In the event Contractor receives any court or administrative agency order, service of process or request by any person or entity (other than Contractor's professionals) for disclosure of any such details, Contractor shall immediately notify County's Project Director. Thereafter, Contractor shall comply with such order, process or request only to the extent required by applicable law. Notwithstanding the preceding sentence, to the extent permitted by law, Contractor shall delay such compliance and cooperate with County to obtain relief from such obligations to disclose until County shall have been given a reasonable opportunity to obtain such relief.

Except as expressly permitted in this Agreement, County agrees not to reproduce, distribute, or disclose to non-County entities (other than outside counsel or consultants subject to non-disclosure agreements), Contractor's Confidential Information without the prior written permission of Contractor or as required by law or pursuant to Paragraph 51 (Dispute Resolution Procedure). County additionally agrees (a) to use any Contractor's Confidential Information only as permitted under the terms of this Agreement and (b) to provide the notification described in Paragraph 10.3.3(1) with respect to all of Contractor's Confidential Information. County (a) shall protect the security of and keep confidential all Contractor's Confidential Information and (b) shall use whatever security measures are reasonably necessary to protect all such information from loss or damage by any cause, including, but not limited to, fire and theft.

18.1.3 COMPLIANCE WITH FEDERAL AND STATE REQUIREMENTS

County is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, as codified as 42 U.S.C. § 132)d through d-8 and as amended from time to time (hereinafter also "HIPAA"). Under this Agreement, Contractor provides services to County and Contractor receives, has access to and/or creates Protected Health Information in order to provide those services. Contractor acknowledges and agrees that all patient records and Protected Health Information shall be subject to the confidentiality and disclosure provisions of HIPAA, HITECH Act, American Recovery and Reinvestment Act of 2009 (hereinafter "ARRA") and the regulations promulgated thereunder by the U.S. Department of Health and Human Services, including Standards for Privacy of individually identifiable Health Information and the Security Standards for Electronic Protected Health Information at 45 Code of Federal Regulations (hereinafter in this Paragraph 18 "C.F.R."), parts 142, 160 and 164, as the same may be amended from time to time, and any other applicable federal and State laws (including California Civil Code Section 56.10) and agrees to maintain the confidentiality of all such records and information in accordance with such laws. The parties agree that they shall abide by the provisions of the

Business Associate Agreement with respect to information subject to HIPAA. Should County amend Exhibit H (Business Associate Agreement) as is necessary to comply with the requirements of the Privacy and Security Regulations (as such term is defined in the Business Associate Agreement), County will negotiate in good faith with Contractor and execute a Change Notice which shall replace Exhibit H (Business Associate Agreement) with the updated Business Associate Agreement.

18.1.4 INDEMNIFICATION

Notwithstanding any provision of this Agreement to the contrary, whether expressly or by implication, Contractor shall indemnify, defend and hold harmless County, its officers, employees, and agents, from and against any and all third party Claims, losses, damages, liabilities and expenses, including, but not limited to, reasonable defense costs and reasonable legal, accounting and other expert, consulting or professional fees, arising from any disclosure of such records and information by Contractor, its officers, employees, or agents, except for any disclosure authorized by this Paragraph 18.

18.2 SECURITY

18.2.1 SYSTEM SECURITY

Notwithstanding anything to the contrary herein, Contractor shall provide all Work utilizing security technologies and techniques in accordance with the industry standards, Contractor's best practices and applicable County security policies, procedures and requirements provided by County to Contractor in writing or otherwise as required by law, including those relating to the prevention and detection of fraud or other inappropriate use or access of systems and networks. Without limiting the generality of the foregoing, Contractor shall implement and use network management and maintenance applications and tools and fraud prevention and detection and encryption technologies and prevent the introduction of any Disabling Device into the System. In no event shall Contractor's actions or inaction result in any situation that is less secure than the security that Contractor then provides for its own systems and data.

18.2.2 SYSTEM DATA SECURITY

Contractor hereby acknowledges the right of privacy of all persons as to whom there exists any System Data or any other County data. Contractor shall protect, secure and keep confidential all System Data in compliance with all federal, state and local laws, rules, regulations, ordinances, and publicly known guidelines and directives, relating to confidentiality and information security (including any breach of the security of the System, such as any unauthorized acquisition of System Data that compromises the security, confidentiality or integrity of personal information). Further, Contractor shall take all reasonable actions necessary or advisable to protect all System Data in its possession, custody or control from loss or damage by any cause, including fire, theft or other catastrophe. In addition, if requested by County's Project Director, Contractor shall provide notification to all persons whose unencrypted personal information was, or is reasonably believed to have been, acquired by any unauthorized person, and the content, method and timing of such notification shall be subject to the prior approval of County's Project Director. Contractor shall not use System Data for any purpose or reason other than to fulfill its obligations under this Agreement.

18.3 REMEDIES

Contractor acknowledges that a breach by Contractor of this Paragraph 18 may result in irreparable injury to County that may not be adequately compensated by monetary damages

and that, in addition to County's other rights under this Paragraph 18 and at law and in equity, County shall have the right to seek injunctive relief to enforce the provisions of this Paragraph 18. The provisions of this Paragraph 18 shall survive the expiration of termination of this Agreement.

Contractor shall take all reasonable actions necessary or advisable to protect the System from loss or damage by any cause. Contractor shall bear the full risk of loss or damage to the System and any System Data by any cause other than resulting from force majeure or County's sole fault.

19. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION

- 19.1 Contractor shall not assign its rights and/or delegate its duties, or both, under this Agreement, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment and/or delegation without such consent shall be null and void. County may exercise or withhold consent in its sole discretion. For purposes of this Paragraph 19, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by County to any approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims, which Contractor may have against County.
- 19.2 Any assumption, assignment, delegation, or takeover of any of Contractor's duties, responsibilities, obligations, or performance of same by any entity other than Contractor, whether through assignment, subcontract, delegation, merger, buyout, Change of Control or any other mechanism, with or without consideration for any reason whatsoever without County's express written approval shall be a material breach of the Agreement which may result in the termination of this Agreement. Notwithstanding the foregoing, shareholders or other equity holders of Contractor may transfer, sell, exchange, assign or divest themselves of any interest they may have in Contractor without breaching the provisions of this Paragraph 19, provided such sale, transfer, exchange, assignment or divestment does not result in a Change of Control.
- 19.3 In the event of a termination under this Paragraph 19, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor. County must deliver notice of termination pursuant to this Paragraph 19 within one-hundred and twenty (120) calendar days of the later of (i) County's knowledge or (ii) public disclosure of any event above requiring County's express prior written approval. For purposes of this Paragraph 19, "Change of Control" shall mean a direct or indirect change (e.g., whether caused by Contractor or its shareholder(s) or other equity holders of Contractor) of the power to direct or cause the direction of the management and policies of Contractor, whether through ownership of assets or voting securities, governing board representation, contract or otherwise. In the event there is a Change of Control without County's express prior written approval under this Paragraph 19, within thirty (30) calendar days of County's knowledge of or the public disclosure of such Change of Control event, Contractor and County will meet to discuss County's concerns regarding the Change of Control and develop solutions and adequate assurances in an effort to resolve County's concerns. In the event County approves the solutions and adequate assurances, an Amendment, if necessary, implementing such solutions and adequate assurances will be submitted to the Board. The approval of the Amendment by the Board will be deemed a cure of Contractor's material breach under this Paragraph 19.

20. TERMINATION FOR DEFAULT

20.1 County may, by written notice to Contractor, terminate the whole or any part of this Agreement if:

1. Contractor fails to timely provide and/or satisfactorily perform any task, subtask, deliverable, goods, service or other Work within the times specified in this Agreement such as the finalized Project Schedule, including the applicable notice and/or cure periods, if any (if no cure period is specified in the Agreement, Contractor shall have thirty (30) days (or such longer period as may be agreed to in writing in accordance with this Agreement); or
2. Contractor fails to demonstrate a high probability of timely fulfillment of the performance requirements under this Agreement; or
3. Contractor fails to make progress as to endanger performance of this Agreement in accordance with its terms; or
4. Contractor in performance of Work under the Agreement fails to comply with the requirements of this Agreement, including but not limited to Exhibit A (Statement of Work) and Exhibit B (System Maintenance); or
5. Contractor (i) fails to perform or comply with (ii) any other provisions of this Agreement with respect to which an express right of termination applies, or (b) any of the other material provisions of this Agreement, or (ii) otherwise materially breaches this Agreement and, in any of these circumstances, does not cure such failure within the times specified in this Agreement, if any (if no cure period is specified in the Agreement, Contractor shall have fifteen (15) days (or such longer period as may be agreed to in writing in accordance with this Agreement) after receipt of written notice from County specifying such failure);

and, unless a shorter cure period is expressly provided in this Agreement, does not cure such failure or fails to correct such failure or breach within thirty (30) days (or such longer period as County may authorize in writing) of receipt of written notice from County specifying such failure or breach, except that Contractor shall not be entitled to any cure period, and County may terminate immediately, in the event that Contractor's failure to perform or comply is not reasonably capable of being cured.

20.2 For purposes of Paragraph 20, "material provision" includes, but is not limited to, any provision of this Agreement which if Contractor fails to perform or comply with such provision, could (a) prevent (i) completion of any Work under and in accordance with this Agreement, (ii) use of the Software in accordance with this Agreement, (iii) performance in accordance with this Agreement, (iv) compatibility, or (v) support of the Software in accordance with this Agreement, (b) compromise the confidentiality or security of County's Confidential Information, and/or (c) increase the financial or other risk to County under this Agreement, including infringement or any other liability.

20.3 If, after County has given notice of termination under the provisions of this Paragraph 20, it is determined by County that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 21 (Termination for Convenience).

1.1 The rights and remedies of County provided in this Paragraph 20 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

21. TERMINATION FOR CONVENIENCE

- 21.1 This Agreement may be terminated, in whole or in part, permanently or from time to time, when such action is deemed by County to be in its best interest. Termination of Work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of Work is terminated and the date upon which such termination becomes effective, which shall be no less than thirty (30) calendar days after the notice is sent. In the event County has purported to terminate this Agreement for default by notice pursuant to Paragraph 20 (Termination for Default) and it has later been determined that Contractor was not in default, no additional notice shall be required upon such determination.
- 21.2 After receipt of a notice of termination, Contractor shall submit to County, in the form and with any certifications as may be prescribed by County, Contractor's termination claim and invoice. Such claim and invoice shall be submitted promptly in accordance with Paragraph 24 (Effect of Termination).

22. TERMINATION FOR IMPROPER CONSIDERATION

- 22.1 County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, Amendment or extension of the Agreement or the making of any determinations with respect to Contractor's performance pursuant to this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.
- 22.2 Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee or to County's Auditor-Controller Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.
- 22.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

23. TERMINATION FOR INSOLVENCY

- 23.1 County may terminate this Agreement immediately at any time upon the occurrence of any of the following:
1. Insolvency of Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay or has admitted in writing its inability to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the United States Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the United States Bankruptcy Code, provided that Contractor shall not be deemed insolvent if it has ceased in the normal course of business to pay its debts which are disputed in good faith and which are not related to this Agreement as determined by County;
 2. The filing of a voluntary or involuntary petition to have Contractor declared bankrupt, where the involuntary petition is not dismissed within sixty (60) days;
 3. The appointment of a receiver or trustee for Contractor; or
 4. The execution by Contractor of an assignment for the benefit of creditors.

- 23.2 The rights and remedies of County provided in this Paragraph 23 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- 23.3 Contractor agrees that if Contractor as a debtor-in-possession, or if a trustee in bankruptcy, rejects this Agreement, County may elect to retain its rights under this Agreement, as provided under Section 365(n) of the United States Bankruptcy Code (11 United States Code, Section 365(n)). Upon written request of County to Contractor or the trustee in bankruptcy, as applicable, Contractor or such trustee shall allow County to exercise all of its rights and benefits under this Agreement including, without limitation, such Section 365(n) (including, without limitation, the right to continued use of all source and object code versions of the Application Software, external system Interfaces which are not proprietary to County and related Documentation in accordance with the terms of the Source Code Escrow Agreement), and shall not interfere with the rights and benefits of County as provided therein. The foregoing shall survive the termination or expiration of this Agreement for any reason whatsoever.

24. EFFECT OF TERMINATION

In the event that County, upon notice to Contractor, terminates this Agreement in whole or in part as provided herein, then:

1. Contractor and County shall continue the performance of this Agreement to the extent not terminated;
2. Contractor shall stop Work under this Agreement on the date and to the extent specified in such notice and provide to County all completed Work and Work in progress, in a media reasonably requested by County;
3. Contractor shall promptly return to County any and all Confidential Information, including County data and County Materials, that relate to that portion of the Agreement and Work terminated by County;
4. County shall pay Contractor all monies due in accordance with the terms of the Agreement for the Work completed up to the time of termination;
5. Contractor shall return to County all monies paid by County, yet unearned by Contractor, including any prorated prepaid Annual Fees calculated depending on the date of termination, if applicable;
6. Upon termination by County for default pursuant to Paragraph 20 (Termination for Default) or for insolvency pursuant to Paragraph 23 (Termination for Insolvency), County shall have the right to procure, upon such terms and in such a manner as County may deem appropriate, goods, services and other Work, similar to those so terminated, and Contractor shall be liable to County for, and shall promptly pay to County by cash payment, any and all excess costs incurred by County, as determined by County, to procure and furnish such similar goods, services and other Work;
7. County shall have the rights set forth in Paragraphs 10.2 (License) and 10.3 (Source Code) to access and use the Source Code as set forth therein after such time as one of the Release Conditions has occurred; and
8. Contractor understands and agrees that County has obligations that it cannot satisfy without use of the System provided to County hereunder or an equivalent solution, and that a failure to satisfy such obligations could result in irreparable damage to County and the entities it serves. Therefore, Contractor agrees that in the event of any termination of

this Agreement, Contractor shall fully cooperate with County in the transition of County to a new solution, toward the end that there be no interruption of County's day to day operations due to the unavailability of the System during such transition. Upon notice to Contractor, Contractor shall allow County or another selected contractor a transition period until expiration of the term of the Agreement, or in all other cases, at a date specified by County, for the orderly turnover of Contractor's Agreement activities and responsibilities without additional cost to County. The transition from the System to another solution may be performed by Contractor as Optional Work, provided there are sufficient Pool Dollars available under the Agreement for the provision of such Optional Work for the transition.

9. Nothing in this Paragraph 24 shall be deemed to prejudice any right of Contractor to make a claim against County in accordance with applicable law and regular County procedures for payment for work performed through the effective date of County's termination of this Agreement for convenience.

25. INDEPENDENT CONTRACTOR STATUS

- 25.1 This Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association as between County and Contractor. The employees and agents of one party are not and shall not be, or construed to be, the employees or agents of the other party for any purpose whatsoever. Contractor shall function as, and in all respects is, an independent Contractor.
- 25.2 Contractor shall be solely liable and responsible for providing all workers' compensation insurance and benefits, liability insurance, employer taxes, compensation, and benefits to, or on behalf of, all persons performing Work pursuant to this Agreement. County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, payroll taxes, disability insurance or benefits, or Federal, State or local taxes, or other compensation, benefits or taxes for any personnel provided by or performing Work on behalf of Contractor.
- 25.3 The employees and agents of Contractor shall, while on the premises of County, comply with all rules and regulations of the premises, including, but not limited to, security requirements.
- 25.4 Notwithstanding the provisions of this Paragraph 24.8, the employees and agents of Contractor shall, while on the premises of County, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

26. SUBCONTRACTING

- 26.1 County has relied, in entering into this Agreement, on the reputation of and on obtaining the personal performance of Contractor, specifically, Contractor Key Staff. Consequently, no performance by the Contractor Key Staff of this Agreement, or any portion thereof, shall be subcontracted by Contractor without notice to County as provided in this Paragraph 26. Any attempt by Contractor to subcontract any performance of this Agreement by the Contractor Key Staff without such notice shall be null and void and shall be deemed a material breach of this Agreement, upon which County may immediately terminate this Agreement.
- 26.2 In the event Contractor subcontracts any portion of its performance of the Agreement by the Contractor Key Staff, Contractor shall provide to County, in writing, a notice regarding such subcontract, which shall include:
 1. The reasons for the particular subcontract;

2. Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected;
3. A detailed description of the Work to be provided by the proposed subcontractor;
4. Confidentiality provisions applicable to the proposed subcontractor's officers, employees and agents, which would be incorporated into the subcontract;
5. include (i) Exhibit F (Contractor's EEO Certification), (iii) Exhibit I (Safely Surrendered Baby Law), and (iii) any other standard County required provisions;
6. A representation from Contractor that:
 - a. the proposed subcontractor is qualified to provide the Work for which subcontractor is being hired;
 - b. either the proposed subcontractor maintains the insurance required by this Agreement or Contractor has procured and maintains such insurance coverage for the proposed subcontractor;
 - c. either the proposed subcontractor or Contractor shall be solely liable and responsible for any and all of subcontractor's taxes, payments and compensation, including compensation to its employees, related to the performance of Work under this Agreement; and
 - d. either the proposed subcontractor or Contractor shall provide for indemnification of County under the same terms and conditions as the indemnification provisions of this Agreement, including those specified in Paragraphs 13 (Indemnification) and 15 (Intellectual Property Warranty and Indemnification); and
7. Other pertinent information and/or certifications reasonably requested by County.

- 26.3 County will review Contractor's request to subcontract and determine on a case-by-case basis whether or not to consent to such request, which consent shall not be unreasonably withheld.
- 26.4 Notwithstanding any provision of this Agreement to the contrary, whether expressly or by implication, Contractor shall indemnify, defend and hold harmless County, its officers, employees and agents, from and against any and all third party Claims, liabilities, damages, costs and expenses, including, but not limited to, defense costs and legal, accounting or other expert consulting or professional fees in any way arising from or related to Contractor's use of any subcontractor, including, without limitation, any officers, employees or agents of any subcontractor.
- 26.5 Notwithstanding any other provision of this Paragraph 26, Contractor shall remain fully responsible for any and all performance required of it under this Agreement, including those which Contractor has determined to subcontract, including, but not limited to, the obligation to properly supervise, coordinate and provide all Work required under this Agreement. All subcontracts shall be made in the name of Contractor and shall not bind nor purport to bind County. Furthermore, subcontracting of any Work under this Agreement shall not be construed to limit, in any way, Contractor's performance, obligations or responsibilities to County or limit, in any way, any of County's rights or remedies contained in this Agreement.
- 26.6 Subcontracting of any Work performed by the Contractor Key Staff under the Agreement shall not waive County's right to prior and continuing approval of any or all such Contractor Key Staff pursuant to the provisions of Paragraph 3.3 (Approval of Contractor's Staff), including any subcontracted members of the Contractor Key Staff. Contractor shall notify its

subcontractors of this County's right prior to subcontractors commencing performance under this Agreement.

- 26.7 Notwithstanding subcontracting by Contractor of any Work under this Agreement, Contractor shall be solely liable and responsible for any and all payments and other compensation to all subcontractors, and their officers, employees, agents, and successors in interest, for any services performed by subcontractors under this Agreement.
- 26.8 Contractor shall inform each of its subcontractors, and shall require each subcontractor to so inform such subcontractor's officers, employees and agents, of the confidentiality, security and non-disclosure provisions of this Agreement. Further, Contractor shall require its subcontractors, and shall require each subcontractor to require such subcontractor's officers, employees and agents, to be bound in writing by confidentiality, security and non-disclosure provisions at least as protective of County as the confidentiality, security and non-disclosure provisions of this Agreement. The indemnification obligations set forth in this Paragraph 26 shall include, but shall not be limited to, any and all losses, damages, liabilities and expenses arising from any breach by a subcontractor or any of its officers, employees or agents of the confidentiality, security and non-disclosure provisions of this Agreement.
- 26.9 In the event that County consents to any subcontracting as required under this Paragraph 26, such consent shall apply to each particular subcontract only and shall not be, or be construed to be, a waiver of this Paragraph 26 or a blanket consent to any further subcontracting as required under the Agreement.

27. DELIVERY AND RISK OF LOSS

Contractor shall bear the full risk of loss due to total or partial destruction of the Software products loaded on CDs or other computer media, until such items are delivered to and accepted in writing by County as evidenced by County's signature on delivery documents.

28. MOST FAVORED PUBLIC ENTITY

Should Contractor, at any time during the term of this Agreement, provide the same goods or services under similar delivery conditions (in each case as reasonably determined by County's Project Director) to the State of California or any county, municipality, or district of the State or to any other state, county or municipality at prices below those set forth in this Agreement, then such lower prices shall be immediately extended to County on a prospective basis. County shall have the right, at County's expense, to utilize a County auditor or an independent auditor to verify Contractor's compliance with this Paragraph 28 by review of Contractor's books and records.

29. RECORDS AND AUDITS

- 29.1 Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Contractor agrees that County, or its authorized representatives, upon reasonable notice and during normal business hours, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transactions, activities or records relating to this Agreement to the extent permitted by law. For the avoidance of doubt, such audits include but are not limited to audits under the Health Care Coverage Initiative and the HITECH Act.
- All such material, including but not limited to all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained

by Contractor and shall be made available to County during the term of this Agreement and for a period of five (5) years thereafter, unless County's written permission is given to dispose of any such material prior to such time and provided such access rights do not constitute an unlawful invasion of the privacy rights of any Contractor employee.

Notwithstanding the foregoing, with respect to employment records that are not needed to support any financial or billing records, such records shall be kept and maintained by Contractor in accordance with Contractor's written record retention policy for a minimum of two (2) years following termination of employment. Contractor shall notify County's Project Director in writing of any changes to Contractor's record retention policy following the Effective Date that impact such employment records.

All material required to be maintained under this Paragraph 29 shall be maintained by Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, Contractor shall make the necessary arrangements at its own cost and expense to have such material made available to the County within the County's borders.

29.2 In the event that an audit is conducted of Contractor specifically regarding this Agreement by any Federal or State auditor, then Contractor shall file a copy of such audit report with County's Auditor-Controller within thirty (30) days of Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

29.3 Failure on the part of Contractor to comply with any of the provisions of this Paragraph 29 shall constitute a breach of this Agreement upon which County may terminate or suspend this Agreement.

30. COUNTY'S QUALITY ASSURANCE PLAN

County, or its agent, will evaluate Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing Contractor's compliance with the terms and conditions of this Agreement. Contractor deficiencies, which County determines are severe or continuing and that may place performance of this Agreement in jeopardy, if not corrected, will be reported to the County's Board of Supervisors. The report will include improvements and/or corrective action measures taken by County and Contractor. If improvement does not occur consistent with the corrective action measures within reasonable time after County's notice of Contractor deficiencies, County may, at its sole option, terminate this Agreement, in whole or in part, pursuant to Paragraph 20 (Termination for Default) or Paragraph 21 (Termination for Convenience), or impose other penalties as specified in this Agreement.

31. CONFLICT OF INTEREST

31.1 No County employee whose position with County enables such employee to influence the award of this Agreement or any competing agreements shall be employed in any capacity by Contractor or have any other direct financial interest in this Agreement. No officer or employee of Contractor, who may financially benefit from the performance of Work hereunder, shall in any way participate in County's approval or ongoing evaluation of such Work, or in any way attempt to unlawfully influence County's approval or ongoing evaluation of such Work.

31.2 Contractor shall comply with all conflict of interest laws, ordinances and regulations now in effect or hereafter to be enacted during the term of this Agreement which are applicable to it

as a Software and Services provider. Contractor warrants that it is not now aware of any facts which do create an unlawful conflict of interest for Contractor. If a party hereafter becomes aware of any facts, which might reasonably be expected to create an unlawful conflict of interest for it, it shall immediately make full written disclosure of such facts to the other. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances.

32. COMPLIANCE WITH APPLICABLE LAWS

- 32.1 In the performance of this Agreement, Contractor shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, directives and codes, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.
- 32.2 Contractor shall indemnify, defend and hold harmless County, its officers, employees, and agents, from and against any and all third party Claims, damages, liabilities, losses, costs, and expenses, including, without limitation, reasonable defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives or codes, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 32 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with full and adequate defense, County shall be entitled to retain its own counsel, including without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.
- 32.3 Failure by Contractor to comply with such laws and regulations shall be material breach of this Agreement and may result in termination of this Agreement.

33. FAIR LABOR STANDARDS

Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless County, its officers, and employees from any and all third party liability for, wages, overtime pay, liquidated damages, penalties, court costs and attorneys' fees arising from acts engaged in by Contractor in violation of applicable wage and hour laws in the State of California and in the Federal Fair Labor Standards Act, for work performed by Contractor's employees for which County may be found jointly or solely liable, provided that County: (i) promptly notifies Contractor in writing of the claim; and (ii) allows Contractor to control, and cooperate with Contractor in, the defense and any related settlement negotiations.

34. COMPLIANCE WITH CIVIL RIGHTS LAWS

- 34.1 Contractor herein certifies and agrees, and will re-certify upon County request no more frequently than once per year, that all persons employed by it, its affiliates, subsidiaries and holding companies will be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental handicap, marital status or political affiliation, in compliance with all applicable Federal and State anti-discrimination

laws and regulations.

- 34.2 Contractor shall, pursuant to Los Angeles County Code Section 4.32, certify to and comply with the provisions of Contractor's EEO Certification (Exhibit F).
- 34.3 Contractor shall ensure that applicants and employees are treated equally during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 34.4 Contractor herein certifies and agrees, and will re-certify upon County request no more frequently than once per year, that it will deal with its subcontractors, bidders or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status or political affiliation, except to the extent necessary to comply with applicable Federal and State anti-discrimination laws and regulations.
- 34.5 Contractor herein certifies, and will re-certify upon County request no more frequently than once per year, that it, its affiliates, subsidiaries and holding companies are in compliance with all Federal, State, and local laws including, but not limited to:
1. Title VII, Civil Rights Act of 1964;
 2. Section 504, Rehabilitation Act of 1973;
 3. Age Discrimination Act of 1975;
 4. Title IX, Education Amendments of 1973, as applicable; and
 5. Title 43, Part 17, Code of Federal Regulations, Subparts A & B,
- and that no person shall, on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age, or disability, be subject to discrimination as to any privileges or uses gained under this Agreement or under any project, program or activity supported by this Agreement.
- 34.6 If County finds that any of the provisions of this Paragraph 34 have been violated, such violation shall, at the election of County, constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement at County's option, either for material breach under Paragraph 20 (Termination for Default) of this Agreement or for convenience under Paragraph 21 (Termination for Convenience) of this Agreement. While County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated State or Federal anti-discrimination laws or regulations shall entitle County to find that Contractor has violated the anti-discrimination provisions of this Agreement.
- 34.7 The parties agree that in the event Contractor is found to have violated the anti-discrimination provisions of this Agreement, and that such discrimination was directly associated with the performance of services provided under this Agreement, County may require, pursuant to Los Angeles County Code Section 4.32.010 (E), that Contractor pay the

sum of Five hundred Dollars (\$500) for each such violation, in lieu of termination or suspension hereof, as liquidated damages are extremely difficult to ascertain or calculate precisely. In the alternative, County may elect to terminate this Agreement pursuant to Paragraph 20 (Termination for Default).

35. RESTRICTIONS ON LOBBYING

35.1 FEDERAL FUNDS PROJECTS

If any Federal funds are to be used to pay for any portion of Contractor's Work under this Agreement, County shall notify Contractor in writing in advance of such payment, and Contractor shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public law 101-121 (31 United States Code Section 1352) and any implementing regulations, and shall ensure that each of its subcontractors receiving funds provided under this Agreement also fully complies with all applicable certification and disclosure requirements.

35.2 LOBBYIST ORDINANCE

Contractor, and each County lobbyist or County lobbying firm, as defined in Los Angeles County Code Section 2.160.010, retained by Contractor, shall fully comply with County's Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Contractor or any County lobbyist or County lobbying firm retained by Contractor to fully comply with County Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which County may immediately terminate or suspend this Agreement at County's option, either for material breach under Paragraph 20 (Termination for Default) of this Agreement or for convenience under Paragraph 21 (Termination for Convenience) of this Agreement.

36. EMPLOYMENT ELIGIBILITY VERIFICATION

36.1 Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding employment of aliens and others and that all its employees performing Services under this Agreement meet the citizenship or alien status requirements contained in Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603).

36.2 Contractor shall obtain from all employees performing under this Agreement all verification and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Contractor shall retain such documentation for the period prescribed by law.

36.3 Contractor shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all third party Claims, damages, liabilities, losses, costs, and expenses, including, but not limited to, reasonable defense costs and legal, accounting and other expert, consulting or professional fees, arising out of or in connection with any employer sanctions and any other liability which may be assessed against Contractor or County in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Agreement.

37. CONTRACT HIRING

37.1 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS

Should Contractor require additional or replacement personnel after the effective date of this Agreement to perform the Work set forth herein, Contractor shall give first consideration for such employment openings to permanent County employees who are targeted for layoff or qualified former County employees who are on a re-employment list during the term of this Agreement.

37.2 CONSIDERATION OF GAIN/GROW PROGRAM PARTICIPANTS FOR EMPLOYMENT

Should Contractor require additional or replacement personnel after the Effective Date, Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that Contractor will interview qualified candidates. County will refer GAIN participants by job category to Contractor.

In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, Contractor shall give County employees first priority.

37.3 PROHIBITION AGAINST INDUCEMENT AND PERSUASION

Contractor and County agree that, during the term of this Agreement and for a period of one (1) year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through non-targeted solicitation in the ordinary course of business, which would include a public announcement.

38. FEDERAL EARNED INCOME CREDIT

If required by applicable law, Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided, in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

39. CONTRACTOR RESPONSIBILITY AND DEBARMENT

39.1 RESPONSIBLE CONTRACTOR

A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Agreement. It is County's policy to conduct business only with responsible contractors.

39.2 CHAPTER 2.202 OF THE COUNTY CODE

Contractor is hereby notified that, in accordance with Chapter 2.202 of the Los Angeles Code, if County acquires information concerning the performance of Contractor on this Agreement or other contracts which indicates that Contractor is not responsible, County may, in addition to other remedies provided in this Agreement, debar Contractor from bidding or proposing on, or being awarded, and/or performing Work on, County agreements for a specified period of time, which generally will not exceed five (5) years, although may exceed five (5) years or be permanent if warranted by the circumstances, and terminate any or all

existing agreements Contractor may have with County.

39.3 NON-RESPONSIBLE CONTRACTOR

County may debar Contractor if County's Board of Supervisors finds, in its discretion, that Contractor has done any of the following: (i) violated any term of a contract with County or a nonprofit corporation created by County; (ii) committed any act or omission which negatively reflects on Contractor's quality, fitness or capacity to perform a contract with County, any other public entity or a nonprofit corporation created by County, or engaged in a pattern or practice which negatively reflects on same; (iii) committed an act or offense which indicates a lack of business integrity or business honesty; or (iv) made or submitted a false claim against County or any other public entity.

39.4 CONTRACTOR HEARING BOARD

39.4.1 If there is evidence that Contractor may be subject to debarment, County's Project Director, or his/her designee, will notify Contractor in writing of the evidence which is the basis for the proposed debarment and will advise Contractor of the scheduled date for a debarment hearing before County's Contractor Hearing Board.

39.4.2 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board will prepare a tentative proposed decision, which shall contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. Contractor, County's Project Director, or his/her designee, and County's departments shall be provided with an opportunity to object to the tentative proposed decision prior to its presentation to County's Board of Supervisors.

39.4.3 After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to County's Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board.

39.4.4 If Contractor has been debarred for a period longer than five (5) years, then Contractor may, after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that such Contractor has adequately demonstrated one or more of the following: (i) elimination of the grounds for which the debarment was imposed; (ii) a bona fide change in ownership or management; (iii) material evidence discovered after debarment was imposed; or (iv) any other reason that is in the best interests of County.

39.4.5 The Contractor Hearing Board will consider a request for review of a debarment determination only where (i) the requesting contractor has been debarred for a period longer than five (5) years, (ii) the debarment has been in effect for at least five (5) years and (iii) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the

Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

- 39.4.6 The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to County's Board of Supervisors. County's Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

39.5 **SUBCONTRACTORS OF CONTRACTOR**

The terms and procedures of this Paragraph 39 shall also apply to subcontractors, consultants and partners of Contractor performing Work under this Agreement.

40. FEDERAL ACCESS TO RECORDS

If, and to the extent that Section 1861(v)(1)(I) of the Social Security Act (42 United States Code Section 1395x(v)(1)(i) is applicable, Contractor agrees that for a period of four (4) years following the furnishing of services under this Agreement, Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Comptroller General of the United States or to any of their authorized representatives, the contracts, books, documents and records of Contractor which are necessary to verify the nature and extent of the costs of services provided hereunder. Furthermore, if Contractor carries out any of the services described in 42 United States Code Section 1395 through any subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period with a related organization (as that term is defined under Federal law), Contractor agrees that each such subcontract shall provide for such access to the subcontract, books, documents and records of the subcontractor.

41. REQUIRED CERTIFICATIONS

Contractor shall obtain and maintain in effect during the term of this Agreement all licenses, permits, registrations, accreditations and certificates required by all Federal, State, and local laws, ordinances, rules, regulations, directives and codes, which are applicable to Contractor's provision of the Services under this Agreement. Contractor shall further ensure that all of its officers, employees, agents and subcontractors who perform Services hereunder, shall obtain and maintain in effect during the term of this Agreement all licenses, permits, registrations, accreditations and certificates which are applicable to their performance hereunder. A copy of each such license, permit, registration, accreditation and certificate required by all applicable Federal, State, and local laws, ordinances, rules, regulations, directives and codes shall be provided, if required by law, in duplicate, to County's Project Manager at the address set forth in Section 1 (County Key Personnel) of Exhibit F (Administration of Agreement).

42. NO THIRD PARTY BENEFICIARIES

Notwithstanding any other provision of this Agreement, Contractor and County do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Agreement, except that this provision shall not be construed to diminish Contractor's indemnification obligations hereunder.

43. CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER

Contractor recognizes that County provides services essential to the residents of the communities it serves, and that these services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster or similar event. Notwithstanding any other

provision of this Agreement, full performance by Contractor during any riot, insurrection, civil unrest, natural disaster or similar event is not excused if such performance remains physically possible without related danger to Contractor's or subcontractors' employees and suppliers. During any such event in which the health or safety of any of Contractor's staff members would be endangered by performing their services on-site, such staff members may perform any or all of their services remotely.

44. WARRANTY AGAINST CONTINGENT FEES

44.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

44.2 For breach of this warranty, County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the fees owed, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

45. SAFELY SURRENDERED BABY LAW

45.1 NOTICE

As required by applicable law, Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrender Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at <http://babysafela.org> for printing purposes.

45.2 ACKNOWLEDGMENT OF COMMITMENT

Contractor acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. Contractor understands that it is County's policy to encourage all County Contractors to voluntarily post County's "Safely Surrendered Baby Law" poster in a prominent position at Contractor's place of business. Contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. County's Department of Children and Family Services will supply Contractor with the poster to be used.

46. COMPLIANCE WITH COUNTY'S JURY SERVICE PROGRAM

46.1 JURY SERVICE PROGRAM

This Agreement is subject to the provisions of County's ordinance entitled Contractor Employee Jury Service Program (hereinafter "Jury Service Program" or "Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code (hereinafter "County Code").

46.2 WRITTEN EMPLOYEE JURY SERVICE POLICY

46.2.1 Unless Contractor has demonstrated to County's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy that provides that its Employees (as defined in Paragraph 46.2.2 below) shall receive from Contractor, on an annual basis, no less than five (5) days of regular pay for actual jury

service. The policy may provide that Employees deposit any fees received for such jury service with Contractor or that Contractor deduct from the Employee's regular pay the fees received for jury service.

- 46.2.2 For purposes of this Paragraph 46, "Contractor" means a person, partnership, corporation or other entity which has an agreement with County or a subcontract with Contractor and has received or will receive an aggregate sum of \$50,000 or more in any twelve (12) month period under one or more County agreements or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full time" means forty (40) hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by County, or 2) Contractor has a longstanding practice that defines the lesser number of hours as fulltime. Fulltime employees providing short term, temporary services of ninety (90) days or less within a twelve (12) month period are not considered fulltime for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for County under this Agreement, the subcontractor shall also be subject to the provisions of this Paragraph 46. The provisions of this Paragraph 46 shall be inserted into any such subcontract and a copy of the Jury Service Program shall be attached to the agreement.
- 46.2.3 If Contractor is not required to comply with the Jury Service Program when the Agreement commences, Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. County may also require, at any time during this Agreement and at its sole discretion, that Contractor demonstrate to County's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.
- 46.2.4 Contractor's violation of this Paragraph 46 of this Agreement may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate this Agreement with Contractor and/or bar Contractor from the award of future County agreements for a period of time consistent with the seriousness of the breach.

47. CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

- 47.1 Contractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through County agreements are in compliance with their court ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.
- 47.2 As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Contractor's duty under this Agreement to comply with all applicable provisions of State and Federal law, Contractor warrants that to the best of its knowledge it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653(a)) and California Unemployment Insurance Code Section 1088.5, and shall, implement all lawfully served Wage and Earnings Withholding Orders or County's Child Support Services Department Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code

Section 5246(b).

48. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 47 (Contractor's Warranty of Adherence to County's Child Support Compliance Program) shall constitute a default by Contractor under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure to cure such default within ninety (90) days of notice by County's Child Support Services Department shall be grounds upon which the Auditor-Controller or County's Board of Supervisors may terminate this Agreement pursuant to Paragraph 20 (Termination for Default) and pursue debarment of Contractor pursuant to Paragraph 39 (Contractor Responsibility and Debarment).

49. DEFAULTED PROPERTY TAX REDUCTION PROGRAM

49.1 CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses who benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this Agreement will maintain compliance, with Los Angeles County Code Chapter 2.206.

49.2 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 49.1 (Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program) shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of Contractor to cure such default within ten (10) days of notice shall be grounds upon which County may terminate this Agreement and/or pursue debarment of Contractor pursuant to County Code Chapter 2.206.

50. COUNTY AUDIT SETTLEMENTS

If, at any time during or after the term of this Agreement, representatives of County conduct an audit of Contractor regarding the Work performed under this Agreement, and if such audit reasonably and accurately find that County's dollar liability for such Work is less than payments made by County to Contractor, then the difference, together with County's reasonable costs of audit, shall be either repaid by Contractor to County by cash payment upon demand or deducted from any amounts due to Contractor from County, as determined by County. If such audit finds County's dollar liability for such Work is more than payments made by County to Contractor, then the difference shall be repaid to Contractor by cash payment.

51. DISPUTE RESOLUTION PROCEDURE

51.1 Contractor and County agree to act immediately to mutually resolve any disputes which may

arise with respect to this Agreement. All such disputes shall be subject to the provisions of this Paragraph 51 (such provisions shall be collectively referred to as the "Dispute Resolution Procedure"). Time is of the essence in the resolution of disputes.

- 51.2 Contractor and County agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder.
- 51.3 Neither party shall delay or suspend its performance during the Dispute Resolution Procedure.
- 51.4 In the event of any dispute between the parties with respect to this Agreement, Contractor and County shall submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.
- 51.5 In the event that the Project Managers are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to the parties' respective Project Directors for further consideration and discussion to attempt to resolve the dispute.
- 51.6 In the event that the Project Directors are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to Contractor's Project Executive and the Director. These persons shall have ten (10) days to attempt to resolve the dispute.
- 51.7 In the event that at these levels, there is not a resolution of the dispute acceptable to both parties, then each party may assert its other rights and remedies provided under this Agreement and/or its rights and remedies as provided by law.
- 51.8 All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all three (3) levels described in this Paragraph 51, the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face to face meeting or by telephone, or in writing by exchange of correspondence.
- 51.9 Notwithstanding the foregoing, in the event of County's infringement of Contractor's intellectual property rights under the Agreement or violation by either party of the confidentiality obligations hereunder, the violated party shall have the right to seek injunctive relief against the other without waiting for the outcome of the Dispute Resolution Procedure.
- 51.10 Notwithstanding any other provision of this Agreement, either party's right to seek injunctive relief to enforce the provisions of Paragraph 18 (Confidentiality and Security) shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of a party's rights and shall not be deemed to impair any claims that such party may have against the other or either party's rights to assert such claims after any such injunctive relief has been obtained.

52. ASSIGNMENT BY COUNTY

This Agreement may be assigned in whole or in part by County, without the further consent of Contractor, to a party which is not a competitor of Contractor and which agrees in writing to perform County's obligations under this Agreement.

53. NEW TECHNOLOGY

Contractor and County acknowledge the probability that the technology of the software and

hardware which comprise the System will change and improve during the term of this Agreement. County desires the flexibility to incorporate into the System any new technologies as they may become available. Accordingly, Contractor's Project Manager shall, promptly upon discovery and on a continuing basis, apprise County's Project Director of all new technologies, methodologies and techniques which Contractor considers to be applicable to the System. Specifically, upon County's request, Contractor shall provide, in writing, a description of such new technologies, methodologies and techniques, indicating the advantages and disadvantages of incorporating same into the System, and provide an estimate of the impact such incorporation will have on the performance, scheduling and price of the System. County, at its sole discretion, may request that this Agreement be amended to incorporate the new technologies, methodologies and techniques into the System pursuant to the provisions of Paragraph 4 (Changes Notices and Amendments).

54. NON-DISCRIMINATION IN SERVICES

- 54.1 Contractor shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, or physical or mental handicap, in accordance with all applicable requirements of Federal and State law. For the purpose of this Paragraph 54, discrimination in the provision of services may include, but is not limited to, the following: denying any person any service or benefit or the availability of the facility, providing any service or benefit to any person which is not equivalent or is not provided in an equivalent manner or at an equivalent time to that provided to others; subjecting any person to segregation or separate treatment in any manner related to the receipt of any service; restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and treating any person differently from others in determining admission, enrollment quota, eligibility, membership, or any other requirements or conditions which persons must meet in order to be provided any service or benefit.
- 54.2 Contractor shall ensure that recipients of services under this Agreement are provided services without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap.

55. UNLAWFUL SOLICITATION

Contractor shall inform all of its employees who provide services hereunder of the provisions of Article 9 of Chapter 4 of Division 3 (commencing with Section 6150) of California Business and Professions Code (i.e., State Bar Act provisions regarding unlawful solicitation as a runner or capper for attorneys) and shall take positive and affirmative steps in its performance hereunder to ensure that there is no violation of such provisions by its employees.

56. GOVERNING LAW, JURISDICTION AND VENUE

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California applicable to agreements made and to be performed within the State. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California. For claims that are subject to exclusive Federal subject matter jurisdiction, Contractor agrees and consents to the exclusive jurisdiction of the Federal District Court of the Central District of California.

57. WAIVER

No breach of any provision hereof can be waived unless in writing. No waiver by County or Contractor of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of County or Contractor to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

58. AUTHORIZATION WARRANTY

Contractor and County represent and warrant that the person executing this Agreement or any Amendment thereto pursuant to Paragraph 4 (Changes Notices and Amendments) on its behalf is an authorized agent who has actual authority to bind it to each and every term, condition and obligation of this Agreement, and that all requirements of Contractor and County have been fulfilled to provide such actual authority.

59. VALIDITY AND SEVERABILITY

59.1 VALIDITY

The invalidity of any provision of this Agreement shall not render the other provisions hereof invalid, unenforceable or illegal, unless the essential purposes of this Agreement shall be materially impaired thereby.

59.2 SEVERABILITY

In the event that any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement, if practicable, and shall in no way affect, impair or invalidate any other provision contained herein. If any such provision shall be deemed invalid in its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. If any provision of this Agreement is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may be necessary to make it valid and effective.

60. NOTICES

60.1 All notices or demands required or permitted to be given or made under this Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered: (i) by hand with signed receipt; (ii) by first class registered or certified mail, postage prepaid; or (iii) by facsimile or electronic mail transmission followed within twenty-four (24) hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid. Notices shall be deemed given at the time of signed receipt in the case of hand delivery, three (3) days after deposit in the United States mail as set forth above, or on the date of facsimile or electronic mail transmission if followed by timely confirmation mailing. Addresses may be changed by either party by giving ten (10) days prior written notice thereof to the other party.

60.2 Director shall have the authority to issue all notices or demands which are required or permitted to be issued by County under this Agreement.

60.3 To County, notices shall be sent to the attention of County's Project Manager and County's Project Director at the respective addresses specified in Section 1 (County Key Personnel) of

Exhibit E (Administration of Agreement).

To Contractor, notices shall be sent to the attention of Contractor's Project Manager at the address specified in Section 2 (Contractor Key Personnel) of Exhibit E (Administration of Agreement), with a copy to Contractor's Project Executive and Chief Financial Officer, if identified in such Section 2 (Contractor Key Personnel) of Exhibit E (Administration of Agreement).

- 60.4 Each party may change the names of the people designated to receive notices pursuant to this Paragraph 60 by giving written notice of the change to the other party, subject to County's right of approval in accordance with Paragraph 3.3 (Approval of Contractor's Staff).

61. ARM'S LENGTH NEGOTIATIONS

This Agreement is the product of arm's length negotiations between Contractor and County, with each party having had the opportunity to receive advice from and representation by independent counsel of its own choosing. As such, the parties agree that this Agreement is to be interpreted fairly as between them and is not to be strictly construed against either as the drafter or otherwise.

62. NON-EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement between the parties. This Agreement shall not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources and shall not restrict Contractor from providing similar, equal or like goods and/or services for other entities.

63. CAPTIONS AND PARAGRAPH HEADINGS

Captions and paragraph headings used in this Agreement are for convenience only, are not a part of this Agreement, and shall not be used in construing this Agreement. If there is a conflict when referencing a Paragraph in this Agreement, between the Paragraph heading title and its number, the Paragraph heading title shall control.

64. FORCE MAJEURE

Neither party shall be liable for failure to perform under this Agreement, if its failure to perform arises out of, and only, fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes or freight embargoes, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of the non-performing party.

65. FORMS AND PROCEDURES

All existing forms and procedures used by Contractor in implementation of the provisions of this Agreement are deemed "approved" by County for purposes of this Paragraph 65. Any new forms and procedures which materially affect Contractor's performance of this Agreement shall be subject to review by County prior to use by Contractor.

66. DAMAGE TO COUNTY FACILITIES, BUILDINGS AND GROUNDS

- 66.1 Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor or employees or agents of Contractor. Such repairs shall be made immediately after Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

- 66.2 If Contractor fails to make timely repairs, County may make any necessary repairs. All costs

incurred by County, as reasonably determined by County, for such repairs shall be repaid by Contractor by cash payment upon demand or, without limitation of all County's other rights and remedies provided by law or under this Agreement, County may deduct such costs from any amounts due Contractor from County under this Agreement.

67. MINIMUM AGE, LANGUAGE SKILLS AND LEGAL STATUS OF CONTRACTOR PERSONNEL AT FACILITY

Contractor cannot assign employees under the age of eighteen (18) to perform Work under this Agreement. All of Contractor's employees working at County facilities must be able to communicate in English. Contractor's employees must be United State citizens or legally present and permitted to work in the United States.

68. NOTICE OF DELAYS

Exception as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within five (5) Business Days, give notice thereof, including all relevant information with respect thereto, to the other party.

69. RE-SOLICITATION OF BIDS AND PROPOSALS

69.1 Contractor acknowledges that, prior to the expiration or earlier termination of this Agreement, County, in its sole discretion, may exercise its right to invite bids or request proposals for the continued provision of the goods and services delivered or contemplated under this Agreement. County shall make the determination to re-solicit bids or request proposals in accordance with applicable County policies.

69.2 Contractor acknowledges that County, in its sole discretion, may enter into an agreement for the future provision of goods and services, based upon the bids or proposals received, with a provider or providers other than Contractor. Further, Contractor acknowledges that it obtains no greater right to be selected through any future invitation for bids or request for proposals by virtue of its present status as Contractor.

70. NO PAYMENT FOR SERVICES PROVIDED FOLLOWING EXPIRATION OR TERMINATION OF AGREEMENT

Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any services provided by Contractor after the expiration or other termination of this Agreement. Should Contractor receive any such payment, it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Agreement shall not constitute a waiver of County's right to recover such payment from Contractor. The provisions of this Paragraph 70 shall survive the expiration or other termination of this Agreement.

71. ACCESS TO COUNTY FACILITIES

Contractor, its employees and agents, may be granted access to County facilities, subject to Contractor's prior notification to County's Project Manager, for the purpose of executing Contractor's obligations hereunder. Unless otherwise agreed to by the parties, access to County facilities shall be restricted to normal business hours, 6:30 a.m. until 6:30 p.m., Pacific Time, Monday through Friday, County observed holidays excepted. Access to County facilities outside of normal business hours must be approved in writing in advance by County's Project Manager, which approval will not be unreasonably withheld. Contractor

shall have no tenancy, or any other property or other rights, in County facilities. While present at County facilities, Contractor's personnel shall be accompanied by County personnel at all times, unless this requirement is waived in writing prior to such event by County's Project Manager.

72. COUNTY FACILITY OFFICE SPACE

In order for Contractor to perform Services hereunder and only for the performance of such Services, County may elect, subject to County's standard administrative and security requirements, to provide Contractor with office space and equipment, as determined at the discretion of the applicable County's Project Manager at County facilities, on a non-exclusive use basis. County shall also provide Contractor with reasonable telephone service in such office space for use only for purposes of this Agreement.

73. PHYSICAL ALTERATIONS

Contractor shall not in any way physically alter or improve any County facility without the prior written approval of the Director, County's Project Director and the Director of County's Internal Services Department, in their discretion.

74. STAFF PERFORMANCE WHILE UNDER THE INFLUENCE

Contractor shall use reasonable efforts to ensure that no employee of Contractor shall perform services hereunder while under the influence of any alcoholic beverage, medication, narcotic or other substance which might impair his or her physical or mental performance.

75. RECYCLED PAPER

Consistent with the County's Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, Contractor agrees to use recycled-content paper to the maximum extent possible in this Agreement.

76. SURVIVAL

In addition to any provisions in this Agreement which specifically state that they shall survive the termination or expiration of the Agreement, the provisions in the following Paragraphs shall also survive the expiration or termination of this Agreement for any reason:

- 2.4 Approval of Work
- 9.5 County's Right to Withhold Payment
- 10 System Ownership and License
- 12 Warranties and Correction of Deficiencies
- 13 Indemnification
- 14 Insurance
- 15 Intellectual Property Warranty and Indemnification
- 16 Proprietary Considerations
- 17 Disclosure of Information

18	Confidentiality and Security
20	Termination for Default
21	Termination for Convenience
22	Termination for Improper Consideration
23	Termination for Insolvency
29	Records and Audits
32	Compliance with Applicable Laws
33	Fair Labor Standards
36	Employment Eligibility Verification
40	Federal Access to Records
42	No Third Party Beneficiaries
50	County Audit Settlements
56	Governing Law, Jurisdiction and Venue
59	Validity and Severability

/

IN WITNESS WHEREOF, County and Contractor by their duly authorized signatures have caused this Agreement to be effective on the day, month and year first above written.

COUNTY OF LOS ANGELES

By _____
Authorized Signature

Name _____

Title _____

CERNER HEALTHCARE SOLUTIONS, INC.

By _____
Authorized Signature

Name _____

Title _____

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By _____
VICTORIA MANSOURIAN
Senior Deputy County Counsel

EXHIBIT A
STATEMENT OF WORK
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)

APRIL 2013

TABLE OF CONTENTS

1.	GENERAL.....	1
1.1	SCOPE	1
1.2	INSTRUCTIONS.....	1
1.3	DEFINITIONS.....	2
1.3.1	Production Plan	2
1.3.2	Project Control Document; PCD.....	2
1.3.3	Project Management Plan	2
1.3.4	Training Plan.....	2
1.3.5	Warranty Period	2
2.	TASKS AND DELIVERABLES.....	2
2.1.1	This Section 2 (Warranty Period.....	2
	TASK 1 – PROJECT MANAGEMENT.....	2
	SUBTASK 1.1 – DEVELOP PROJECT CONTROL DOCUMENT.....	3
	DELIVERABLE 1.1 – PROJECT CONTROL DOCUMENT	3
	SUBTASK 1.2 – PREPARE STATUS REPORTS AND CONDUCT CONFERENCES	4
	DELIVERABLE 1.2 – STATUS REPORTS AND CONFERENCES	5
	SUBTASK 1.3 – CONDUCT PROJECT KICK OFF	5
	DELIVERABLE 1.3 – PROJECT KICK OFF	6
	TASK 2 – SOFTWARE IMPLEMENTATION.....	6
	SUBTASK 2.1 – PROVIDE PROJECT MANAGEMENT PLAN	6
	SUBTASK 2.2 – PROVIDE SYSTEM ENVIRONMENT CONFIGURATION	6
	DELIVERABLE 2.2 – SYSTEM ENVIRONMENT CONFIGURATION.....	7
	SUBTASK 2.3 – VERIFY SERVER ENVIRONMENT	7
	DELIVERABLE 2.3 – SERVER ENVIRONMENT VERIFIED	7
	SUBTASK 2.4 – VERIFY CLIENT ENVIRONMENT.....	7
	DELIVERABLE 2.4 - CLIENT ENVIRONMENT VERIFIED	7
	SUBTASK 2.5 – CONDUCT SYSTEM TRAINING AND PROVIDE DOCUMENTATION.....	7
	SUBTASK 2.5.1 – CONDUCT SYSTEM TRAINING.....	7
	DELIVERABLE 2.5.1 – SYSTEM TRAINING.....	8
	SUBTASK 2.5.2 – PROVIDE USER DOCUMENTATION	8
	DELIVERABLE 2.5.2 – DOCUMENTATION.....	9
	TASK 3 – SYSTEM ACCEPTANCE	9
	SUBTASK 3.1 – CONDUCT SYSTEM TESTS	9
	DELIVERABLE 3.1 – SYSTEM TESTED	10
	SUBTASK 3.2 – DEVELOP PRODUCTION PLAN	10
	DELIVERABLE 3.2 – PRODUCTION PLAN.....	11
	SUBTASK 3.3 – SYSTEM ACCEPTANCE	12
	SUBTASK 3.3.1 – TRANSITION TO PRODUCTION ENVIRONMENT	12
	DELIVERABLE 3.3.1 – SYSTEM IN PRODUCTION USE	12
	SUBTASK 3.3.2 – CONDUCT PERFORMANCE VERIFICATION	12

DELIVERABLE 3.3.2 – PERFORMANCE VERIFICATION REPORT	12
TASK 4 – SYSTEM MAINTENANCE	13
SUBTASK 4.1 – PROVIDE MAINTENANCE SERVICES	13
DELIVERABLE 4.1 – MAINTENANCE SERVICES	13
SUBTASK 4.2 – PROVIDE SYSTEM SUPPORT PLAN	13
DELIVERABLE 4.2 – SYSTEM SUPPORT PLAN	14
SUBTASK 4.3 – PROVIDE SYSTEM SUPPORT	14
DELIVERABLE 4.3 – SYSTEM SUPPORT	14
TASK 5 – SYSTEM DOCUMENTATION	14
SUBTASK 5.1 – PROVIDE SYSTEM DOCUMENTATION	14
DELIVERABLE 5.1 – SYSTEM DOCUMENTATION	15
TASK 6 – PROVIDE OPTIONAL WORK	15
DELIVERABLE 6 – OPTIONAL WORK	15

ATTACHMENTS

Attachment A.1	System Requirements
Attachment A.2	System Architecture
Attachment A.3	System Environment
Attachment A.4	County Pharmacies
Attachment A.5	Change Notice Template
Attachment A.6	Acceptance Certificate

1. GENERAL

1.1 SCOPE

This Exhibit A (SOW) consists of instructions, tasks, subtasks, deliverables, goods, services and other work to be provided by Contractor to County as part of the Software for the Outpatient Pharmacy Information System (OPIS), which shall meet the requirements of this Agreement including Attachment A.1 (System Requirements) and, unless specified otherwise, includes Attachments A.1 through A.6 thereto.

Contractor shall perform, complete and deliver all work, however denoted, as set forth in this SOW, or in any attached or referenced document, in full compliance with the Agreement. Also defined herein are those Tasks and Subtasks that involve participation of both Contractor and County. Unless otherwise specified as an obligation of County, Contractor shall perform all tasks and subtasks and provide all deliverable as defined therein.

The general scope of work to be performed under this Agreement includes, but is not limited to, providing services necessary to implement, support and maintain the OPIS for the County Pharmacies defined in Attachment A.4 (County Facilities), including Project Management, Application software implementation, System Acceptance, System Maintenance and Optional Work, if any, provided by Contractor to County under the Agreement.

Contractor shall perform all Tasks and Subtasks and shall provide all associated Deliverables within the timeframes specified in the Project Control Document. Contractor may also be required to provide Optional Work as requested by County and agreed to by the parties pursuant to the terms of the Agreement. Contractor shall, during the term of the Agreement, provide System Maintenance as set forth in Exhibit B (System Maintenance).

1.2 INSTRUCTIONS

Contractor shall provide all deliverables to County in an electronic format or media as mutually agreed to by County and Contractor for the following:

- All status reports, meeting minutes, general correspondence and other deliverable documents.
- All applicable Documentation.
- All Project Control Document and Project Management Plan updates using Contractor's proprietary project management standard MethodM or County standard, as agreed to by County and Contractor, in accordance with Task 1 – Project Management.

Contractor shall provide all general correspondence and documentation to County in an electronic format or on media as mutually agreed to by County and Contractor, including without limitation for the following:

- All general correspondences and documentation;
- All status reports and meeting minutes;
- All implementation plans and updates using Contractor's project management standards or County standards, as agreed to by County and Contractor;
- All required training materials;
- All invoices and billing documentation; and
- As applicable, all draft validation and acceptance test plans.

Capitalized terms used in this Exhibit A without definition have the meanings given to such terms in the Base Agreement.

1.3 DEFINITIONS

1.3.1 Production Plan

The term “Production Plan” shall have the meaning specified in Subtask 3.2 – Develop Production Plan.

1.3.2 Project Control Document; PCD

The terms “Project Control Document” and “PCD” shall mean the detailed plan for implementation services to be provided by Contractor to County pursuant to Subtask 1.1 – Develop Project Control Document.

1.3.3 Project Management Plan

The term “Project Management Plan” shall have the meaning specified in Subtask 1.1 – Develop Project Control Document.

1.3.4 Training Plan

The term “Training Plan” shall have the meaning specified in Subtask 1.1 – Develop Project Control Document.

1.3.5 Warranty Period

The term “Warranty Period” shall have the meaning specified in Subtask 3.3.2 – Conduct Performance Verification.

2. TASKS AND DELIVERABLES

2.1.1 This Section 2 (Warranty Period)

The term “Warranty Period” shall have the meaning specified in Subtask 3.3.2 – Conduct Performance Verification.

Tasks and Deliverables) of Exhibit A specified all Tasks, Subtasks and Deliverables shall be provided by Contractor to County. Unless specified otherwise, each task herein shall be performed separately for each Phase, leading to Phase Acceptance. Notwithstanding the foregoing, County may elect that any part of Work for each Phase be provided by Contractor simultaneously.

TASK 1 – PROJECT MANAGEMENT

Contractor shall provide project management and administration for the Work and the System to be provided by Contractor under the Agreement as provided in this Task 1 – Project Management below. Unless otherwise specified herein or agreed to by the parties, Contractor shall utilize its best available standard practices and procedures in the performance of all project management and administration tasks.

For each County Pharmacy, Contractor shall provide comprehensive project management services to ensure successful implementation of the System. Contractor shall provide one (1) Contractor’s Project Manager to perform this Task 1 – Project Management. Working in conjunction with County’s Project Manager and the County’s Pharmacy Project Managers, Contractor’s Project Manager shall be responsible for monitoring the progress of the project, coordinating activities, identifying and tracking issues and facilitating problem resolution.

Contractor's Project Manager shall be proactive in communicating project goals, activities and issues; providing status updates and pertinent management reports; arranging necessary meetings; advising County's Project Manager; and otherwise facilitating project management services.

SUBTASK 1.1 – DEVELOP PROJECT CONTROL DOCUMENT

Contractor shall review the System Requirements with County's Project Manager. Based upon that review, Contractor shall prepare a high level Project Control Document ("PCD") and submit it for written approval to County's Project Manager. Any subsequent significant modifications to the PCD shall be subject to the provisions of the Base Agreement. The PCD shall reside within Contractor's MethodM framework.

Contractor's Project Manager and County's Project Manager shall report Project status on a regular basis as required by County and shall participate in status meetings monthly, or as otherwise agreed to by County and Contractor.

DELIVERABLE 1.1 – PROJECT CONTROL DOCUMENT

Contractor shall provide the PCD pursuant to Subtask 1.1 – Develop Project Control Document, which, at a minimum, shall include the following information:

1. All Work described in this Statement of Work and elsewhere in the Agreement;
2. A detailed Project Management Plan (in this Exhibit A, "PMP"), using County's standard or Cerner's MethodM implementation process and tools, as agreed to by County and Contractor, available on line and including the following:
 - a. All Deliverables, including those referenced in the Schedule of Payments,
 - b. All Tasks, Subtasks and other Work,
 - c. Associated dependencies among Deliverables, Tasks, Subtasks and other Work,
 - d. Roles assigned to each Deliverable, Task, Subtask and other Work;
 - e. Start date and date of completion for each Deliverable, Task, Subtask and other Work,
 - f. Proposed County review period for each Deliverable, and
 - g. Proposed milestones;
3. Identification of all of Contractor Key Personnel;
4. A Communication Plan (in this Exhibit A, "CP"), documenting the approach to Communication management, including methodology, recommended tool(s) and escalation process;
5. Approaches to alternative project communications;
6. A comprehensive Risk Management Plan (in this Exhibit A, "RMP"), documenting the approach to risk analysis (e.g., the evaluation of risks and risk interactions to assess the range of possible project outcomes), risk mitigation (e.g., the identification of ways to minimize or eliminate project risks) and risk tracking/control (e.g., a method to ensure that all steps of the risk management

process are being followed and, risks are being mitigated effectively). The RMP shall have a clearly established process for problem escalation and shall be updated, as needed, through the term of the Agreement;

7. Initial identification of risks that may impact the timely delivery of the Application Software, probability and potential impact, recommended mitigation strategy and impact of implementing any risk mitigation strategies;
8. Project staffing and resource management plan; and
9. Configuration and Change Management Plan (in this Exhibit A “CCMP”). Changes, in this context, refer to changing the functionality of or adding additional functionality (e.g., changes to the project scope) to any Application Software Component. The approach shall ensure that the impacts and rationale for each change are analyzed and coordinated prior to being approved. The CCMP may vary from item to item, as determined by County's Project Director.

The PCD shall provide for the System installation and configuration plan, including as it relates to the Software and System Environment, implementation of the System Software, development of the end-user Interfaces, system administration and security, technical support and knowledge transfer, and related Documentation and backup of: System Software, Software resources, data, testing resources, plus training components and materials. The PCD may be modified only if such modification has been approved in advance in writing by County's Project Manager.

SUBTASK 1.2 – PREPARE STATUS REPORTS AND CONDUCT CONFERENCES

Contractor shall provide ongoing Project Management, which shall include, but not be limited to, the following:

1. Application Software monthly status reports; and
2. Updates to the PCD, including Project Management Plan and Risk Management Plan.

Contractor's Project Manager shall provide full project management and control of Project activities. Contractor's Project Manager shall present to County's Project Manager a written Status Report (Deliverable 1.2 – Status Reports and Conferences) documenting Project progress, plans and outstanding issues. Contractor's Project Manager shall meet with or conduct a status update phone call with County's Project Manager on a weekly basis, or as otherwise agreed to by County and Contractor, to review Project Status Reports and any related matters. All variances shall be presented to County for approval at the status meeting. The first report shall be presented to County's Project Manager one (1) week following the Effective Date, or at such later date as agreed to by County and Contractor, in a format approved by County.

This Subtask shall include, but not be limited to:

1. Project planning and direction;
2. Contractor staffing and personnel matters, including management of Contractor technical staff;
3. Evaluation of results and status reporting;

4. Incorporation of County's System Requirements, including all Hardware, Performance, interface, and functional requirements (see Attachment A.1 (System Requirements));
5. Incorporation of required software modification, if any; and
6. Management and tracking of all issues and their resolution.

Contractor's Project Manager and County's Project Manager shall report Project status on a regular basis and shall participate in monthly status meetings. The project and reporting system shall include, but not be limited to, the following components:

1. Kick off meeting;
2. Updated PCD; and
3. Status Reports and meetings or teleconferences.

The Project Status Reports prepared by Contractor's Project Manager pursuant to this Subtask 1.2 – Prepare Status Reports and Conduct Conferences shall be used as the mechanism for Contractor to report any Project risks or problems identified as part of the implementation process.

DELIVERABLE 1.2 – STATUS REPORTS AND CONFERENCES

Contractor's Project Manager shall prepare and present to County's Project Manager a written Status Report documenting project progress, plans and outstanding issues pursuant to Subtask 1.2 – Prepare Status Reports and Conduct Conferences.

Contractor's Project Manager shall meet with or conduct a status update phone call with County's Project Manager at least monthly, or as otherwise agreed to by County and Contractor, to review these Project Status Reports and any related matters. All variances shall be presented for approval by County at the status conferences. The first report shall be presented to County's Project Manager one (1) week following the Effective Date, or at such later date as agreed to by County and Contractor, in a format approved by County.

SUBTASK 1.3 – CONDUCT PROJECT KICK OFF

Contractor shall conduct a separate project kick-off meeting for each County Pharmacy. At a minimum, the meeting objectives shall include:

1. Review of the project scope
2. Review of resource commitment
3. Establishing buy-in for schedule and processes
4. Identifying issues and risks
5. Clarifying responsibilities for the Pharmacy team, CIO, CEO and executive staff
6. Next steps.

Contractor shall prepare and distribute an agenda, handouts and recommended participants by role at least two weeks prior to the meeting. The meeting agenda shall be approved by County's Pharmacy Project Manager no later than two (2) weeks before the meeting. Contractor's Project Manager shall participate in all local kick-off meetings.

DELIVERABLE 1.3 – PROJECT KICK OFF

Contractor and County shall conduct the County Pharmacy kick-off meeting as described in Subtask 1.3 – Conduct Project Kick Off, adhering to the approved agenda.

TASK 2 – SOFTWARE IMPLEMENTATION

For each County Facility and County Pharmacy, Contractor shall provide and install Baseline Application, including Core Application, Baseline Interfaces and Baseline Customizations, if any, in the Server Environment and in the Client Environment, if required, as further provided in this Task 2 – Software Implementation below.

SUBTASK 2.1 – PROVIDE PROJECT MANAGEMENT PLAN

For each County Pharmacy, Contractor shall provide County with a detailed Project Plan developed pursuant to Deliverable 1.1 – Project Control Document. Contractor, in consultation with County, shall modify the Project Plan to provide for the project implementation of the System as described in this Statement of Work. Contractor shall provide a Project Plan to County in a mutually agreed upon timeframe and format using County's standard or Contractor's MethodM implementation process and tools, as agreed to by County and Contractor, and shall include the following:

1. A list of milestones, tasks and subtasks with start and end dates, and associated deliverables for the System.
2. Job titles of County and Contractor personnel required to complete each task.
3. Progress reporting for each milestone, task, subtask, and associated deliverable.

The following major tasks shall be addressed in the Project Plan:

1. Project Management
2. Requirements Analysis and Implementation Design
3. System Implementation
4. Baseline Interfaces
5. Test Plans
6. System Tests
7. Final Acceptance
8. System Training and Documentation
9. System Maintenance
10. Post-Implementation Optional Work

SUBTASK 2.2 – PROVIDE SYSTEM ENVIRONMENT CONFIGURATION

Contractor shall provide to County a minimum System configuration for the System Environment, including the Server Environment and the Client Environment, in order for the System at each County Pharmacy to operate in accordance with the Documentation, System Requirements and other Specifications by specifying the

minimum specifications, configurations and locations for the System Environment components, including also workstations, printers and scanners.

DELIVERABLE 2.2 – SYSTEM ENVIRONMENT CONFIGURATION

Contractor shall provide County's Project Manager in writing the minimum System configuration for the System Environment for each County Facility in accordance with Subtask 2.2 – Provide System Environment Configuration.

SUBTASK 2.3 – VERIFY SERVER ENVIRONMENT

Contractor shall verify that the Server Environment, including Production Environment, Test Environment, Training Environment and Backup Environment, has been properly installed by County consistent with the minimum System configuration and that Server Environment is ready for the loading of the Server portion of the Baseline Application.

DELIVERABLE 2.3 – SERVER ENVIRONMENT VERIFIED

Contractor shall provide to County's Project Manager written verification that the minimum System Configuration for the Server Environment is for each County Pharmacy is in accordance with Subtask 2.3 – Verify Server Environment and is ready for installation of the Baseline Application.

SUBTASK 2.4 – VERIFY CLIENT ENVIRONMENT

Contractor shall verify in writing that the Client Environment has been properly installed by County consistent with the minimum specifications provided by Contractor and is ready for the loading of the Client portion of the Baseline Application.

DELIVERABLE 2.4 - CLIENT ENVIRONMENT VERIFIED

Contractor shall provide to County's Project Manager written verification that that the minimum System configuration for the Client Environment for each County Pharmacy and County's server host site is in accordance with Subtask 2.4 – Verify Client Environment.

SUBTASK 2.5 – CONDUCT SYSTEM TRAINING AND PROVIDE DOCUMENTATION

For each County Facility, Contractor shall establish the Training Environment as for the provision of System Training. Contractor shall conduct System Training for the Software in accordance with the mutually agreed upon Training Plan.

SUBTASK 2.5.1 – CONDUCT SYSTEM TRAINING

For each County Pharmacy, Contractor shall:

1. Setup the Training for the Software
2. Contractor may request to complete training for several County Pharmacies concurrently to be conducted only following County's approval. For each County Pharmacy conduct System Training which shall include at a minimum:
 - a. Training Environment and Test Environment
 - b. Training Classroom

- c. Observe and Assist in End-User Training
- d. Software Training Materials
- e. Training to Trainers
- f. Training for Software Administrators
- g. Train server Administrative Personal for the Software, including but not limited to: Production, Test, Training, Backups, Maintenance Services and Support Services.

Contractor shall establish the Training Environment and Test Environment after successful completion of First Productive Use. Contractor shall insure that the Training Environment and Test Environment match the Production Environment.

Contractor and County jointly shall verify the setup of Production Environment by repeating the System Tests set forth in Subtask 3.1 – Conduct System Tests to the Production Environment.

DELIVERABLE 2.5.1 – SYSTEM TRAINING

For each County Facility, Contractor shall conduct System Training and certify in writing that training was conducted in accordance with Subtask 2.5.1 – Conduct System Training.

Contractor shall insure that both the Training Environment and the Test Environment match the Production Environment.

SUBTASK 2.5.2 – PROVIDE USER DOCUMENTATION

Contractor shall provide comprehensive documentation necessary for enterprise server administrators and County Pharmacy administrators. Documentation shall include detailed information and Application Software administration procedures covering, at a minimum:

- A. Client installation procedures and configuration options
- B. Back-up and restore procedures
- C. Server Configuration guidelines document
- D. Database administration tasks
- E. Restoring of normal operations after a pharmacy client failure
- F. Restoring of normal server operations after a server production, testing, or training incident
- G. Interface monitoring and recovery
- H. Recovering from a System failure
- I. System logs and audit procedures for both servers and County Pharmacy clients
- J. Performance monitoring and system resource monitoring
- L. Scheduling tasks

- J. County Pharmacy Printer set-up
- K. Application Software Reporting tool
- L. Required IP address and ports
- M. Required operating and application system services
- N. System security
- O. Scheduled maintenance
- P. Obtaining and applying software patches
- Q. Capacity planning
- R. User administration
- S. Utilities
- T. How to get assistance
- U. Other topics necessary for administration and operation of the System

Documentation shall be delivered in electronic form. County shall have the right to make as many copies as it shall require and to make derivative works for its own use in operating and maintaining the Software, including Third Party Software.

DELIVERABLE 2.5.2 – DOCUMENTATION

For each County Facility, Contractor shall develop and deliver in writing the OPIS Documentation in accordance with Subtask 2.5.2 – Provide User Documentation.

TASK 3 – SYSTEM ACCEPTANCE

SUBTASK 3.1 – CONDUCT SYSTEM TESTS

For each County Pharmacy, in preparation for System Tests, Contractor shall provide, as part of Implementation Services to County, Test Plans for each of the System Tests. Contractor and/or County, as applicable, shall conduct the following System Tests in accordance with the applicable Test Plan:

- A. Reliability Test – to be conducted in the Test Environment after delivery and installation of the Operating Software to validate that System meets availability requirements.
- B. Integrated Functional Test – to demonstrate, within the Test Environment, the functionality of the System including all Software as built for the County with all customized components.
- C. System Performance Test – in Contractor’s development environment, to determine the system's ability to handle larger than anticipated transaction volumes or System Performance.

Contractor shall provide certification that the Software has successfully passed each of the System Tests based on the criteria agreed upon by County and Contractor.

Contractor shall develop issue tracking procedures and maintain an issue log during the tests. Contractor shall provide County’s Project Manager with a written report, within five (5) Business Days of completion of diagnostic testing, or at such later time

as reasonably agreed to by County and Contractor, documenting the results of the diagnostic testing, including any Deficiencies noted during this process and Contractor's action plan to correct all such Deficiencies. The Test Plan shall include at a minimum:

1. A description of the test site
2. A plan for loading test data
3. A plan, developed in collaboration with County's Pharmacy Project Managers at each Pharmacy, for connection of Interfaces to test feeds.
4. Personnel required for testing
5. Test scenarios covering a comprehensive set of business processes for which the system will be used by County.
6. Test scenarios covering all requirements listed in Attachment A.1 (System Requirements), which either (i) have been marked as (standard) available or (ii) have been marked as Custom with County opting for the custom functionality.

DELIVERABLE 3.1 – SYSTEM TESTED

Contractor shall conduct the System Tests in accordance with the Test Plan as provided in Subtask 3.1 – Conduct System Tests and provide a report for County approval demonstrating successful completion of each such System Test.

SUBTASK 3.2 – DEVELOP PRODUCTION PLAN

For each County Pharmacy and the County server host site, Contractor and County shall collaborate to produce a written Production Plan for transitioning the System to Production Environment in accordance with the Project Management Plan. Contractor shall be responsible for documenting the Production Plan.

The various County Pharmacies that are part of Los Angeles County Department of Health Services may or may not reach First Productive Use on the same day, as mutually agreed to by County and Contractor.

County will provide a core team of Pharmacy Department and technical personnel to work with Contractor on First Productive Use support for each County Pharmacy.

Per County Pharmacy, Contractor shall conduct planning meetings with the County project team to ensure readiness for a smooth transition to Production Environment and achieving production use of the Software.

The Production Plan shall include, at a minimum:

1. Schedule for First Productive Use for each County Pharmacy.
2. Activities that are required to be performed prior to First Productive Use.
3. Production teams designated by the project team, including Contractors staff and County's staff.
4. Detailed work schedules for Production teams.

5. First Productive Use command center preparation and activities (e.g., manager, support staff, communications, PCs and printers, hotline, etc.).
6. Interface implementation steps.
7. County Pharmacy end-user downtime procedures during switch over to Production Use.
8. Procedures for handling County Pharmacy workflow both manual and for the Software.
9. Implementation steps of Production Use (First Productive Use).
10. In the case of a First Productive Use failure and/or major problems upon implementation, written procedures will be developed by County to return to the PSCAS system .
11. Any other information, schedules and procedures necessary to ensure a smooth transition to Production Use.

For each County Pharmacy, Contractor shall make changes to the Production Plan based on the discussions in the pre First Productive Use meetings with County, including County Pharmacy staff and provide County's Project Director with an updated final Production Plan and a “Go” or “No Go” recommendation.

County and Contractor may mutually agree to postpone the First Productive Use at the request of either party based on evidence provided. Contractor and County’s Project Manager shall agree to documentation of the issues that must be resolved no later than five (5) Business Days prior to the scheduled First Productive Use. Contractor and County in cooperation from County Facility and County Pharmacy staff shall resolve all such issues. After the documented issues are resolved, Contractor and County shall resume activities in preparation for First Productive Use based upon a revised agreed upon First Productive Date.

For each of the three (3) County Pharmacies identified by County, Contractor shall provide on-site support resources as necessary to successfully achieve First Productive Use.

For each County Pharmacy, at a mutually agreed time before prior to First Productive Use, the Production Plan shall be implemented. County shall have the right to postpone the First Productive Use at the discretion of County’s Project Director.

DELIVERABLE 3.2 – PRODUCTION PLAN

For each County Pharmacy, Contractor shall provide a final Production Plan document utilizing Contractor’s MethodM implementation methodology or other methodology agreed to by County and Contractor, as described in Subtask 3.2 – Develop Production Plan.

SUBTASK 3.3 – SYSTEM ACCEPTANCE

SUBTASK 3.3.1 – TRANSITION TO PRODUCTION ENVIRONMENT

Following the completion of Subtask 3.1 – Conduct System Tests and County’s approval that the System meets the System Requirements and the Specifications, Contractor shall transition the System to the Production Environment by performing any tasks under this Subtask 3 (System Acceptance), as applicable, in the Production Environment.

DELIVERABLE 3.3.1 – SYSTEM IN PRODUCTION USE

The System shall achieve First Productive Use and shall be ready for Production Use when Contractor provides to County, and County approves, documented results certifying that the System was successfully transitioned to the Production Environment pursuant to Subtask 3.3.1 – Transition to Production Environment.

SUBTASK 3.3.2 – CONDUCT PERFORMANCE VERIFICATION

Following successful transitioning of the System to the Production Environment, unless a shorter period is agreed to by County and Contractor in writing, County will monitor for Deficiencies and Contractor shall maintain the System in Production Use for a minimum of (i) forty-five (45) days for the first three (3) County Pharmacies implemented and (ii) twenty-one (21) days for the subsequent County Pharmacies implemented (hereinafter “Warranty Period”). Upon occurrence of a Deficiency, Contractor shall correct such Deficiencies by re-performance pursuant to, and subject to the provisions of, the Base Agreement. The System shall achieve Phase Acceptance if and when all Major Deficiencies identified during the Warranty Period have been corrected, even if the last correction occurs after such Warranty Period.

Commencing with First Productive Use and continuing through the Warranty Period, any problems encountered by County in the use of the System shall be subject to the applicable System Maintenance terms under the Agreement.

DELIVERABLE 3.3.2 – PERFORMANCE VERIFICATION REPORT

Following successful completion of Subtask 3.3.2 – Conduct Performance Verification, Contractor shall provide to County the Performance Verification report, including supporting Documentation, that the Software complies with the System Requirements and the Specifications, including all System Performance Requirements, under full production load. Contractor shall conduct a review of this Deliverable 3.3.2 – Performance Verification Report with County at a meeting scheduled by County and provide any County-requested demonstrations of the Software including:

- a. Summary of activities, results and outcomes;
- b. Summary of each Deficiency identified by Contractor or County. The summary shall include for each Deficiency:
 - i. Description of each Deficiency and its root cause,
 - ii. Business processes, Software functions and/or Interfaces impacted,

- iii. Description of all potential risks to the Software and mitigation strategy for the Software,
- iv. Corrective action plan, test scenarios and implementation approach,
- v. Schedule for completion of each corrective action and resources required or assigned,
- vi. Status of each corrective action,
- vii. Date of completion of each correction, and
- viii. Date of County's Project Director's approval of each correction;
- c. Summary of lessons learned; and
- d. Recommendations for any improvements to the Software.

TASK 4 – SYSTEM MAINTENANCE

SUBTASK 4.1 – PROVIDE MAINTENANCE SERVICES

Contractor shall provide System Maintenance, which shall include all goods and services necessary to manage, operate and support the Software in order to comply with the System Requirements and Specifications and shall be provided during Support Hours for the term of the Agreement, as further specified in Exhibit B (System Maintenance). System Maintenance shall include Maintenance Services, consisting of Updates, as well as Support Services, which include, but are not limited to, help-desk support during Support Hours (“Help Desk”), as requested or required by County.

The System Maintenance services shall include, without limitation:

1. Maintenance of Software services;
2. Support for all Software issues/problems;
3. Support for all Software upgrades, updates, new releases, etc;
4. Support for all Software fixes, patches, etc.; and
5. Access to knowledgeable Contractor personnel (i.e., Help Desk) who can answer questions on the use of the System or provide analysis on solutions to operational problems, which County may encounter during Support Hours.

DELIVERABLE 4.1 – MAINTENANCE SERVICES

Contractor shall provide System Maintenance in accordance with the terms of Subtask 4.1 – Provide Maintenance Services, Attachment A.1 (System Requirements), Exhibit B (System Maintenance) and the Base Agreement, which shall include, but not be limited to:

1. Maintenance of Software services;
2. Providing and maintaining System Software, as appropriate;
3. Providing Updates to the Software, as appropriate.

SUBTASK 4.2 – PROVIDE SYSTEM SUPPORT PLAN

Contractor shall prepare and provide a System Support Plan that will address the specific Support Services requirements of the Software including but not limited to:

- Support and administration of the System Software
- Responding to Support Services requests made by County.
- Access to knowledgeable Contractor personnel (i.e., Help Desk) who can answer questions on the use of the System or provide analysis on solutions to operational problems, which County may encounter during Support Hours.
- all goods and services necessary to Support the Application Software in order to comply with Attachment A.1 (System Requirements), Exhibit B (System Maintenance) and the Base Agreement.

DELIVERABLE 4.2 – SYSTEM SUPPORT PLAN

Contractor shall provide System Support Plan in accordance with the terms of Subtask 4.2 – Provide System Support Plan.

SUBTASK 4.3 – PROVIDE SYSTEM SUPPORT

Contractor shall provide System Support, which shall include all goods and services necessary to manage, operate and support the Application Software in order to comply with the System Requirements and Specifications and shall be provided during Support Hours for the term of the Agreement, as further specified in: Deliverable 4.2 – System Support Plan and Exhibit B (System Maintenance). System Support Services, include, but are not limited to, help-desk support during Support Hours (“Help Desk”) and off-hours, as requested or required by County.

The System Support services shall include, but not be limited to:

1. Support for all Application Software issues/problems;
3. Support for all Application Software upgrades, updates, new releases, etc;
4. Support for all Application Software fixes, patches, etc.; and
5. Access to knowledgeable Contractor personnel (i.e., Help Desk) who can answer questions on the use of the System or provide analysis on solutions to operational problems, which County may encounter during Support Hours.
6. Providing and maintaining System Software, as appropriate.
7. Providing Support to Updates to the Software and third party software as required.

DELIVERABLE 4.3 – SYSTEM SUPPORT

Contractor shall provide System Support Plan in accordance with the terms of Subtask 4.3 – Provide System Support.

TASK 5 – SYSTEM DOCUMENTATION

SUBTASK 5.1 – PROVIDE SYSTEM DOCUMENTATION

Contractor shall prepare and provide County with System and user reference Documentation for the platform and solutions utilizing out-patient prescription data procedures/transmission provided by Contractor under this Agreement. This

Documentation shall provide County staff with a comprehensive reference source of System functionality, and all System Maintenance activities listed in Task 4 – System Maintenance.

DELIVERABLE 5.1 – SYSTEM DOCUMENTATION

Contractor shall provide County with Knowledge Transfer Documentation in accordance with Subtask 5.1 – Provide System Documentation. Contractor shall deliver this Documentation in an electronic format as required by County.

TASK 6 – PROVIDE OPTIONAL WORK

For all County Facilities, if requested in writing by County’s Project Manager and mutually agreed upon, Contractor shall provide to County Optional Work following First Productive Use using Pool Dollars, provided there are sufficient Pool Dollars available for such Optional Work. Optional Work may include Software Modifications, consisting of Additional Interfaces and Additional Customizations, Additional Products, consisting of Additional Software and Additional Hardware, and/or Professional Services, consisting of Consulting Services and Additional Training.

Upon County’s request, Contractor shall submit to County for approval a not-to-exceed Maximum Fixed Price calculated based on the pricing terms set forth in Exhibit C (Payment Schedule) and a proposed Work Order. County and Contractor shall agree on the Work Order for provision of such Optional Work, including, as applicable testing, warranty, etc.

DELIVERABLE 6 – OPTIONAL WORK

If requested in writing by County’s Project Manager and subject to mutual agreement, Contractor shall provide to County Optional Work in accordance with Task 6 – Provide Optional Work. provided there are sufficient Pool Dollars available for such Optional Work. Any enhancements or modifications of the Specifications, including System Requirements and System Performance Requirements, resulting from Optional Work shall be incorporated into, and become part of, the Specifications. Any product of Optional Work shall become part of the Software, as applicable, and shall be subject to County’s written approval in accordance with the terms of the Agreement.

EXHIBIT B

SYSTEM MAINTENANCE

APRIL 2013

1. GENERAL

1.1 OVERVIEW

This Exhibit B sets forth the scope of, and Contractor's service level commitment regarding, the Software, including Maintenance and Support, correction of Deficiencies, Warranties and County's remedies for Contractor's failure to meet the service level commitment specified herein. Capitalized terms used in this Exhibit B without definition shall have the meanings given to such terms in the Base Agreement.

The following Schedules are attached to and form a part of this Exhibit B:

Schedule B.1 – County Remote Access Policy.

1.2 SCOPE OF SERVICES

Contractor shall provide Maintenance and Support, including Maintenance Services and Support Services, specified in the Base Agreement and Exhibit A (Statement of Work) and this Exhibit B, as more fully described below. Maintenance and Support shall commence in accordance with Paragraph 5.3 (System Maintenance) of the Base Agreement and shall continue for the term of the Agreement.

Contractor shall provide System Maintenance, including Maintenance Services and Support Services, for the Software from Contractor's business premises or at the applicable County Facility or other County site, as necessary to fulfill its obligations under the Agreement.

1.3 DEFINITIONS

1. The term "Business Continuity" shall mean the degree to which County may achieve uninterrupted stability of systems and operational procedures.
2. The term "Deficiency Credit(s)" shall have the meaning specified in Section 6.1 (Deficiency Credits Deficiency Credits).
3. The term "Disabling Device" shall have the meaning specified in Section 5.1.4 under Section 5.1 (General Warranties).
4. The term "Downtime" shall mean the period of time when the System or any System component is unavailable as a result of the Software or when the System experiences any Severity Level 1 Deficiency and includes Unscheduled Downtime and Scheduled Downtime.
5. The term "Help Desk" shall mean Contractor's help desk for providing Maintenance and Support hereunder, as specified in Section 3.1 (Help Desk) below.
6. The term "Severity Level" shall mean any one of the Deficiency severity levels 1, 2, 3 or 4, as specified in Section 4.2.1 (Deficiency Severity Levels).
7. The term "Maintenance Services" shall have the meaning specified in Section 2 (Maintenance Services).
8. The term "Resolution Time" shall have the meaning specified in Section 4.2.1 (Deficiency Severity Levels).
9. The term "Response Time" shall have the meaning specified in Section 4.2.1 (Deficiency Severity Levels).
10. The term "Scheduled Downtime" shall have the meaning specified in Section 2.3 (Scheduled Maintenance).

11. The term “Scheduled Maintenance” shall have the meaning specified in Section 2.4 (Scheduled Maintenance) below.
12. The term “Service Warranties” shall mean Contractor's warranties regarding Services provided under the Agreement, including those specified in Section 5.4 (Service Warranties).
13. The term “Support Hours” shall have the meaning specified in Section 3.1 (Help Desk).
14. The term “Support Services” shall have the meaning specified in Section 3 (Support Services).
15. The term “System Availability” shall mean the amount of time during any month when the System is not experiencing Unscheduled Downtime caused by Software.
16. The term “System Availability Requirements” shall mean the System Performance Requirements regarding System Availability specified in Attachment A.1 (System Requirements), as further described in Section 5.3 (System Performance Warranties).
17. The term “System Improvement” shall have the meaning specified in Section 6.3 (System Performance Deficiencies).
18. The term “System Performance Deficiency” shall have the meaning specified in Section 6.3 (System Performance Deficiencies).
19. The term “System Performance Warranties” shall have the meaning specified in Section 5.3 (System Performance Warranties).
20. The term “Software Response Time” shall mean the amount of time elapsed from the point a User initiates the transaction to the point the Software provides a response.
21. The term “Software Response Time Requirements” shall mean the System Performance Requirements regarding Software Response Time specified in Attachment A.1 (System Requirements), as further described in Section 5.3 (System Performance Warranties).
22. The term “Software Warranties” shall mean Contractor's warranties regarding the Software provided under the Agreement, including those specified in Section 5.2 (Software Warranties).
23. The term “Unscheduled Downtime” shall have the meaning specified in Section 3.4 (Business Continuity).
24. The term “Warranties” shall mean and refer to any or all of the warranties regarding Contractor's Work under the Agreement, including general warranties, Software Warranties, System Performance Warranties and Service Warranties, as further specified in Section 5 (Warranties).

2. MAINTENANCE SERVICES

Contractor shall provide maintenance services in respect the Software as provided in this Section 2 below, which shall include provision of Application Updates (hereinafter "Maintenance Services").

2.1 SYSTEM SOFTWARE

2.1.1 UPDATES

As part of Maintenance Services, Contractor shall, at no additional cost beyond the applicable Support Fees, provide Updates to the Software including Third Party Applications, which shall

include Version Releases, program updates, Custom Modifications and any Replacement Products, to keep current with County's and Contractor's technology standards, industry standards, regulatory and statutory changes provided by Contractor to any customer base at no charge and to remain in compliance with the terms of the Agreement, including this Exhibit B. Without limiting the other provisions of this Agreement, including, without limitation, this Exhibit B, such Updates shall be provided to County at least once every six (6) months, unless otherwise agreed to by County and Contractor.

Installation of each Update shall be subject to prior written approval of County's Project Manager and shall be performed during Scheduled Downtime at a date and time mutually agreed to by the parties. Contractor's provision and installation of such Updates to the Software shall be provided at no additional cost to County beyond any Support Fees. If a security problem in the Software (e.g., closing "back doors" or other intrusion-related problem) is identified by Contractor, County or any third party, Contractor shall provide to County, within two (2) Business Days of Contractor's knowledge of the existence of such security problem, either a program Update curing such security problem or a workaround and a mitigation plan approved by County's Project Manager for curing such security problem.

2.1.2 THIRD PARTY SOFTWARE

Maintenance Services additionally include compatibility of all Third Party Software, including Operating Software and County Software approved by Contractor, with the Software. Contractor shall ensure that the Software is compatible with the required or critical program Updates to the Operating Software and County Software. Within seven (7) calendar days after release of such program Update, Contractor shall provide to County a notice of the availability of the program Update, if applicable to County's installation of Software. County and Contractor shall then agree on a timeframe for the validation and installation of such program Update, not to exceed ten (10) days from Contractor's notice, unless mutually agreed to by County and Contractor.

In the event it is determined that any required program Update is not compatible with the Software, Contractor shall provide County with a workaround to protect the integrity of the Software until such time as the Deficiency is corrected. Compatibility issues with the Operating Software will be subject to Section 4 (Correction of Deficiencies).

2.2 SYSTEM ENVIRONMENT

As part of Maintenance Services Contractor shall ensure that the System Environment components provided by County in accordance with Contractor's specifications or approved by Contractor, including System Hardware, System Network, Operating Software and County Software, are sufficiently robust to meet the System Performance Requirements under this Agreement and to support and remain compatible with the Software as required hereunder during the term of the Agreement.

2.3 SCHEDULED MAINTENANCE

As part of Maintenance Services, Contractor shall perform Software maintenance by providing a client advocate for loading Updates upon County's election and performing such other preventive maintenance as is necessary for the operation of the Software in accordance with the Attachment A.1 (System Requirements) and other Specifications (hereinafter "Scheduled Maintenance").

All Scheduled Maintenance shall be performed during Scheduled Downtime agreed to by County and Contractor. For the purpose of this Exhibit B, "Scheduled Downtime" shall mean all time

during which the System cannot be accessed by Users due to Scheduled Maintenance, including, but not limited to, preventive maintenance, installation of Application Updates, scheduled reboots and scheduled restarts. Contractor shall work with County to determine a mutually agreeable time for Scheduled Downtime.

3. SUPPORT SERVICES

Contractor's responsibilities for supporting the operation of the Software (hereinafter "Support Services") shall include identifying the cause of the problem reported, timely correcting all Deficiencies caused by the Software or otherwise by Contractor and assisting County in correcting problems that are not caused by Contractor or the Software, as provided in this Exhibit B.

Requests for Support Services will be submitted by authorized County staff in person or via telephone, pager, facsimile, mail or electronic mail (email) or any other reasonable means agreed to by County and Contractor. Contractor shall utilize and maintain an incident tracking system for tracking and reporting on all Deficiencies reported and discovered by either County or Contractor.

The Program Manager and/or System Administrator, or designee, as applicable, will oversee the proper functioning of the System. This individual will also act as the liaison between County and Contractor as necessary to promptly advise and assist in the resolution of all Deficiencies.

Support Services described herein shall be provided to County by Contractor at no additional cost to County beyond the Maintenance Fees.

3.1 HELP DESK

County will develop and execute an ongoing help desk for post First Productive Use support. The help desk will assist County personnel with first line support issues and appropriately triage calls that require subsequent escalation to Contractor's Support Team. As part of Support Services, Contractor shall provide operational support for the Software 24 hours per day, 7 days per week, 365/366 day per year (hereinafter "Support Hours"), which shall include without limitation providing a point of contact for all System problems reported by County as provided in the paragraph immediately below by maintaining a Help Desk.

In the event of a System problem, prior to contacting Contractor's Help Desk, County will use its best efforts to determine if the problem has been caused by the Software or otherwise by Contractor or alternatively any of the Third Party Software components of the System Environment (i.e., Operating Software or County Software). If it is determined by County that the problem was caused by the Software or otherwise by Contractor or if County is unable to identify the source of the problem, County will initiate a request for problem resolution by contacting Contractor's Help Desk.

3.2 SYSTEM SOFTWARE

3.2.1 SOFTWARE

As part of Support Services, Contractor shall remedy any Deficiency in the Software, including Third Party Application, or otherwise caused by Contractor in accordance with, and subject to the provisions of, Section 4 (Correction of Deficiencies) below to ensure that the Software operates in accordance with the Attachment A.1 (System Requirements) and other Specifications, including, without limitation, System Performance Requirements.

3.2.2 THIRD PARTY SOFTWARE

As a part of Support Services, Contractor shall correct all Deficiencies caused by the Third Party Software components of the System Environment resulting from Contractor's failure to maintain Software's compatibility with such Third Party Software components in accordance with, and subject to the provisions of, Section 4 (Correction of Deficiencies). In addition, Contractor shall cooperate and assist County in the correction of all other Deficiencies caused by the Operating Software or County Software.

3.3 SYSTEM ENVIRONMENT

As a part of Support Services, Contractor shall correct all Deficiencies caused by the System Environment resulting from Contractor's failure to maintain Software's compatibility with such System Environment components in accordance with, and subject to the provisions of, Section 4 (Correction of Deficiencies). In addition, Contractor shall cooperate and assist County in the correction of all other Deficiencies caused by the System Environment components.

3.4 BUSINESS CONTINUITY

County shall not tolerate Unscheduled Downtime. As used herein, the term "Unscheduled Downtime" shall mean any period of time during which the System experiences Downtime that is not Scheduled Downtime. In the event any Unscheduled Downtime is caused by Software or otherwise by Contractor, Contractor shall restore the System and correct all Deficiencies causing such Unscheduled Downtime in accordance with, and subject to the provisions of, Section 4 (Correction of Deficiencies). During any Unscheduled Downtime, Contractor shall support County in its Business Continuity restoration efforts of the System by, promptly restoring the Software and remotely assisting or on-site assisting County in restoring System Data from backup media or secondary server and reinstalling any Third Party Software components of the System Environment.

4. CORRECTION OF DEFICIENCIES

4.1 IDENTIFICATION OF DEFICIENCIES

The Deficiencies under this Agreement may be identified by County or Contractor. Upon discovery of a Deficiency by County, County will report the Deficiency to Contractor's Help Desk for resolution in accordance with this Exhibit B.

The Severity Level of the Deficiency shall be assigned by County based on the applicable definition set forth in Section 4.2.1 (Deficiency Severity Levels) below. Based on Contractor's proposed solution and/or workaround(s) for the Deficiency, County may, in its reasonable discretion, reevaluate and, if it so chooses, escalate or downgrade the Priority Level of the Deficiency pursuant to Section 4.2.3 (Severity Level Adjustment) below.

4.2 RESOLUTION OF DEFICIENCIES

4.2.1 DEFICIENCY SEVERITY LEVELS

County shall assign one of the Priority Levels specified below to each Deficiency incident reported by County to Contractor's Help Desk and/or entered in Contractor's incident tracking system consistent with the Severity Level definition applicable to such Deficiency. Following report of a Deficiency from County, Contractor shall respond back to County within the prescribed "Response Time" and provide a confirmation of County assigned Severity Level, subject to mutual agreement by the parties. Each Deficiency caused by the Software or Contractor shall be resolved within the specified "Resolution Time". For purposes of this Exhibit B, a Deficiency shall be deemed resolved when either (i) Contractor provides a

permanent solution that cures the Deficiency or (ii) Contractor identifies the source of the Deficiency, demonstrates commitment to curing the Deficiency and implements a workaround.

If a workaround for resolving a Major Deficiency (a) is uninstalling an Update that caused a Deficiency or (b) causes any loss to Software functionality, the Deficiency shall be re-categorized as either Severity Level 3 or Severity Level 4, as determined by County.

The response time and the Resolution Time for each Severity Level shall be as specified below.

SEVERITY LEVEL	DESCRIPTION OF DEFICIENCY	RESPONSE TIME	RESOLUTION TIME
1 Immediate Impact	Complete loss of system functionality or critical data recovery, where application availability and functionality are significantly impacted. A major portion of end users are not able to process transactions or access data critical to conducting daily business leading to patient care impact or financial concern. The Support Analyst will work towards resolution of each Immediate Impact service request immediately. Service requests with an Immediate Impact severity will take precedence over all other severities, and issues related to patient safety or significant financial loss will be investigated before non-critical issues.	Fifteen (15) Minutes	One (1) hour
2 High Impact	Significant loss of system functionality or non-critical data recovery, where application availability and functionality are partially impacted. A significant portion of end users are not able to process transactions or access data critical to conducting daily business leading to patient care impact or financial concern.	Thirty (30) Minutes	Four (4) hours
3 Moderate Impact	Moderate loss of system functionality or non-critical data recovery, where application availability and functionality are moderately impacted. End users have a significantly limited ability to process transactions.	Two (2) hours	Three (3) days
4 Minor Impact	Procedural or system issues that do not affect patient care and for which an alternative solution is not available; includes issues related to non-implemented features, issues of a prolonged or complex nature, and all other solution-related service requests. <u>Note:</u> This is the default Severity if County does not specify one when the service request is logged.	Four (4) hours	Six (6) days

For Major Deficiencies, the response time and the Resolution Time shall start tolling when County notifies Contractor of a Deficiency by telephone or otherwise, including Contractor's Help Desk, or when the Deficiency is logged into Contractor's incident tracking system, whichever occurs earlier, and shall end when County determines that the Deficiency has been resolved. Upon occurrence of non-Major Deficiency, the response time and the Resolution Time shall start tolling during normal office hours (Monday through Friday from 6:00 a.m. to 6:00 p.m. PT and on Saturday 6:00 a.m. to 3:00 p.m. PT).

4.2.2 PROBLEM RESOLUTION PROCESS

For any Deficiency reported by County or discovered by Contractor, Contractor shall immediately commence corrective action. Contractor shall correct all Deficiencies caused by the Software or Contractor within the Resolution Times specified in Section 4.2.1 (Deficiency Severity Levels) above. In any case, Contractor shall also immediately commence to develop a workaround or a fix for any Deficiency of Priority Levels 1 through 3.

In the event that Contractor fails to correct a Deficiency caused by the Software or Contractor within the prescribed Resolution Time, Contractor shall provide County with a written report that includes a detailed explanation of the status of such Deficiency, preliminary actions taken, detailed mitigation plans and an estimated additional time for completing the correction of such Deficiency. This process will be repeated at an interval agreed to by both County and Contractor until such Deficiency is resolved and the resolution is approved by County's Project Manager or designee. The parties will jointly cooperate during this period of time.

Contractor shall maintain ongoing communication with County regarding the status of correction of all Deficiencies reported or discovered. In addition, County may contact Contractor personnel to inquire about the status of resolution of any Deficiency.

Failure by Contractor to resolve any Deficiency caused by the Software or Contractor within the Resolution Time prescribed under Section 4.2.1 (Deficiency Severity Levels) shall entitle County to remedies specified in Section 6 (Remedies) below.

4.2.3 SEVERITY LEVEL ADJUSTMENT

County, in its reasonable discretion, may escalate or downgrade a Severity Level of a Deficiency if the Deficiency meets the definition of the Severity Level as escalated or downgraded. If a workaround may be provided by Contractor for a Deficiency, County and Contractor may agree to downgrade the Severity Level of such Deficiency until an agreed upon date. If a permanent fix is not provided by Contractor by such agreed upon date, then County shall be entitled to escalate the Severity Level of the Deficiency back to the original Severity Level or higher as provided herein.

5. WARRANTIES

5.1 GENERAL WARRANTIES

Contractor represents, warrants, covenants and agrees that throughout the term of this Agreement:

- 5.1.1** Contractor shall comply with the Software Warranties, System Performance Warranties and Services Warranties as specified in this Section 5 below.
- 5.1.2** Contractor shall comply with the descriptions and representations (including, but not limited to, Deliverable documentation, performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements applicable to professional software design meeting industry standards) set forth in this Agreement, Exhibit A (Statement of Work) with all attachments thereto, including Attachment A.1 (System Requirements), this Exhibit B and elsewhere in the Agreement.
- 5.1.3** With respect to intellectual property, (i) Contractor shall have the full power and authority to grant the License, ownership and all other rights granted by this Agreement to County; (ii) no consent of any other person or entity is required by Contractor to grant such rights other than consents that have been obtained and are in effect; (iii) County is entitled to use the Software without interruption, subject only to County's obligation to make the required payments and observe the License terms under this Agreement; (iv) this Agreement and the Software licensed or acquired herein, are neither subject to any liens, encumbrances or pledges, nor subordinate to any right or claim of any third party, including Contractor's creditors; (v) during the term of this Agreement, Contractor shall not subordinate this Agreement or any of its rights hereunder to any third party without the prior written consent of County and without providing in such subordination

instrument for non-disturbance of County's use of the Software (or any component thereof) in accordance with this Agreement; and (vi) neither the performance of this Agreement by Contractor, nor the License to or ownership by, and use by, County and its Users in accordance with this Agreement will in any way violate any non-disclosure agreement, nor constitute any infringement or other violation of any copyright, trade secret, trademark, service mark, patent, invention, proprietary information, or other rights of any third party.

- 5.1.4** Contractor shall not intentionally cause any unplanned interruption of the operations of, or accessibility to the System, or any component through any device, method or means including, without limitation, the use of any "virus", "lockup", "time bomb", or "key lock", "worm", "back door" or "Trojan Horse" device or program, or any disabling code, (i) which has the potential or capability (a) of compromising the security of County's confidential or proprietary information or (b) of causing any unplanned interruption of the operations of, or accessibility of the Software or any component to County or any User or (ii) which could alter, destroy or inhibit the use of the Software, any component or the data contained therein (collectively referred to for purposes of this Exhibit B as "Disabling Device(s)"), which could block access to or prevent the use of the Software or any component by County or Users. Contractor represents, warrants, and agrees that it has not purposely placed, nor is it aware of, any Disabling Device on any Software component provided to County under this Agreement, nor shall Contractor knowingly permit any subsequently delivered Software component to contain any Disabling Device.

In addition, Contractor shall prevent viruses from being incorporated or introduced into the Software prior to delivery and installation thereof to County and shall prevent any viruses from being incorporated or introduced in the process of Contractor's loading of Software thereto, or being introduced in the process of Contractor's performance of on-line support. County acknowledges that Contractor is not necessarily the manufacturer of the virus protection software. The foregoing shall not apply to the use of license keys required to enable proper operation of the Software.

- 5.1.5** The Source Code for the Software deposited by Contractor in escrow with the Escrow Agent represents an executable and compilable Source Code version of the Software utilized by County and maintained by Contractor pursuant to this Agreement.

5.2 SOFTWARE WARRANTIES

Contractor also represents, warrants, covenants and agrees that throughout the term of this Agreement:

- 5.2.1** The Software licensed to County by Contractor shall be compatible with the then-specified version of the Third Party Software and System Hardware as approved in writing by Contractor for use with the Software.
- 5.2.2** Contractor shall support the current Version Release of Software and the most recent prior two (2) Version Releases.
- 5.2.3** Software shall be fully integrated and interfaced as required by Attachment A.1 (System Requirements) relating to Interfaces.
- 5.2.4** Software shall be fully compatible with the rest of the System components, including any County Software approved by Contractor and any System Hardware in use by County on

the Effective Date, provided that such System Hardware meets Contractor's applicable specifications outlined in Attachment A.1 (System Requirements) or is approved by Contractor.

5.2.5 None of the Third Party Applications requires execution by County of software licenses with third parties.

5.2.6 The System as a whole shall be capable of delivering all of the functionality and meeting all Specifications and other requirements set forth in this Agreement, including Attachment A.1 (System Requirements), this Exhibit B and any applicable Work Order.

5.3 SYSTEM PERFORMANCE WARRANTIES

Contractor represents, warrants, covenants and agrees that the Software shall meet the System Performance Requirements, including Software Response Time Requirements and System Availability Requirements, as specified in Attachment A.1 (System Requirements) (hereinafter "System Performance Warranties") during the Initial Term, unless County upgrades System Environment component during the Extended Term following Contractor's recommendation in effect extending the System Performance Warranties to the Extended Term. If System Performance gradually declines, the parties shall in good faith work together to agree on resolving such System Performance problem.

5.4 SERVICE WARRANTIES

5.4.1 All services, including Implementation Services, ongoing System Maintenance and those related to Additional Work, shall be performed by Contractor under this Agreement in a timely and professional manner by qualified personnel;

5.4.2 All services shall comply with the applicable specifications and requirements set forth in this Agreement, including without limitation Exhibit A (Statement of Work), Attachment A.1 (System Requirements), this Exhibit B (System Maintenance) and any applicable Scope of Work;

5.4.3 The service level of System Maintenance shall not degrade during the term of the Agreement.

6. REMEDIES

6.1 DEFICIENCY CREDITS

Credits shall accrue for Contractor's failure to timely correct any Severity Level 1 or Priority Level 2 Deficiency caused by the Software or Contractor and/or for the occurrence of three (3) or more such Level 1 Deficiencies in any single calendar month (collectively and individually, "Deficiency Credit(s)").

Without limiting any other rights and remedies available to County pursuant to this Agreement, by law or in equity, County shall be entitled to Deficiency Credit(s), as applicable, in the event that (i) Contractor fails to correct any such Level 1 or Priority Level 2 Deficiency within the applicable a reasonable time, with reasonable efforts to meet applicable Resolution Time specified in Section 4 (Correction of Deficiencies) of this Exhibit 3, or such longer period as agreed to by County and Contractor, or (ii) three (3) or more such Severity Level 1 Deficiencies occur in any calendar month during the term of this Agreement.

6.2 ASSESSMENT OF DEFICIENCY CREDITS

If Contractor fails to correct any such Level 1 or Level 2 Deficiency within the applicable Resolution Time, then in each instance, County may, in its reasonable discretion, assess Deficiency Credits in amounts per incident per County Pharmacy in amounts as set forth below:

1. For Severity Level 1 Deficiencies, \$500.00 per ; and
2. For Severity Level 2 Deficiencies, \$250.00 per.

Before any Deficiency Credits are assessed by County, Contractor shall be provided with a notice and an opportunity to mutually agree on the extent of such Deficiency Credits, if any. The amount of time elapsed for the calculation of Deficiency Credits will be determined by the timestamp or other evidence issued by the Help Desk at such time as a service request is sent by County to Contractor.

The maximum amount of Deficiency Credits for any specific incident at any specific County Pharmacy shall not exceed fifty percent (50%) of the Monthly Fees for System Maintenance for the applicable County Pharmacy.

Notwithstanding anything to the contrary set forth in this Exhibit B, any Deficiency Credits accruing to County as a result of Unscheduled Downtime or other Deficiency shall be based upon its escalated or downgraded Severity Level, if applicable assigned to such Deficiency in accordance with Section 4.2.3 (Severity Level Adjustment) of this Exhibit B.

Contractor shall be liable to County for Deficiency Credits in the amounts as specified above. Deficiency Credits, in any amounts, are not and shall not be construed as penalties and, if assessed, will be deducted from County's payment due to Contractor.

6.3 SYSTEM PERFORMANCE DEFICIENCIES

If Contractor fails to meet System Performance Requirements, including Software Response Time Requirements or System Availability Requirements, or if the Software fails to be compatible with the System Environment during first three (3) years from the Effective Date without the addition of a major Software functionality, provided that the System Environment has been implemented by County in accordance with Contractor's recommendation pursuant to Section 5.3 (System Performance Warranties) (hereinafter System Performance Deficiency"), and upgrade, repair or replacement of any of the components of the System Environment (hereinafter "System Improvement"), including Operating Software, System Hardware and/or System network, is necessary to remedy the System Performance Deficiency, then the cost of any necessary System Improvement to comply with the System Performance Warranties specified herein shall be borne by Contractor and may be deducted by County from the Maintenance Fees due to Contractor.

EXHIBIT C
PAYMENT SCHEDULE
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)

APRIL 2013

EXHIBIT C
PAYMENT SCHEDULE

This Exhibit C sets forth the pricing and payment terms for the work to be provided pursuant to the Agreement, including the Software License, Implementation Services, System Maintenance and Optional Work, whether provided by Contractor itself or by utilizing subcontractor(s).

The following Schedules are attached to and form a part of this Exhibit C:

Schedule C.1 – Optional Work Schedule

1. SYSTEM IMPLEMENTATION

Contractor shall provide System Implementation, including License and Implementation Services, specified in Exhibit A (Statement of Work) for each Phase of the Project at to no cost to County under this Agreement, as described in this Section 1 below.

1.1 SYSTEM SOFTWARE LICENSE

Contractor shall provide Licenses for the components of Application Software and Third Party Software that comprise System Software, as listed below in this Section 1.1, at no cost to County under this Agreement for the County Pharmacies listed in Attachment A.4 (County Pharmacies) and any other County Pharmacies that may be added during the term of the Agreement, even if there is cost to Contractor, following County's approval, to provide such Licenses.

SOFTWARE LICENSE	PRICE
Application Software License	0.00
Third Party Software License	0.00
Total – System Software License	\$0.00

1.1.1 Software License

DESCRIPTION	PRICE
Etreby Pharmacy Solutions	0.00
Etreby Chain Host System with WAN	0.00
eSignature	0.00
e-Prescribing for Chains	0.00
Etreby Inventory Control	0.00
HL7 Interface	0.00
Auto Dispensing Machine Interface for Chain – Parata	0.00
EDIx12Wholesaler Interface for Chain – Cardinal	0.00
IVR Interface for Chain – VoiceTech	0.00
Total – Application Software License	\$0.00

1.1.2 Third Party Software License

DESCRIPTION	PRICE
SQL Server Enterprise	0.00
SQL Server Standard	0.00
SQL Server Runtime	0.00
Total – Third Party Software License	\$0.00

1.2 IMPLEMENTATION SERVICES

Contractor shall provide all services relating to the implementation of System Software, including any and all Interfaces, at no cost to County under this Agreement for the County Pharmacies listed in Attachment A.4 (County Pharmacies) and any other County Pharmacies that may be added during the term of the Agreement, even if there is cost to Contractor, following County's approval, to provide such implementation.

SERVICE / PERSONNEL TYPE	HOURS	PRICE
Delivery Consultant	300	0.00
Engagement Consultant	80	0.00
Learning Consultant	60	0.00
Solutions Architect	360	0.00
Total – Implementation Services		\$ 0.00

2. SYSTEM MAINTENANCE

Contractor shall provide System Maintenance services, including Maintenance Services and Support Services, relating to the System at the Maintenance Fee rate of \$69,432 per year for all eighteen (18) County Pharmacies listed in Attachment A.4 (County Pharmacies). Maintenance Fees will be paid on a per County Pharmacy basis prorated depending on the number of County Pharmacies operational and live on the System. In accordance with Contractor's quote of September 13, 2012, Maintenance Fee for each individual County Pharmacy to be paid by County shall be approximately \$3,857 per year and shall not increase during the term of the Agreement. Contractor shall implement and maintain the Software at County Pharmacies at no cost to County during the term of the Agreement.

Should any County Pharmacies be added beyond those listed in Attachment A.4 (County Pharmacies), Contractor shall provide System Maintenance for each such added County Pharmacy at the same Maintenance Fee rate of \$3,857 per year. Payment of Maintenance Fees for each County Pharmacy maintained at cost to County shall commence upon each applicable Phase Acceptance and shall be paid by County to Contractor monthly in arrears. Maintenance Fees shall not increase during the term of the Agreement.

Below is a projection of the total Maintenance Fees to be paid by County to Contractor at the Maintenance Fee rate of \$69,432 for all eighteen (18) County Pharmacies identified by County on the Effective Date. Depending on how the actual Project Schedule varies from the projected one, the Annual Fees for each year of System Maintenance may vary without exceeding the Contract Sum allocated for the term of the Agreement.

SYSTEM MAINTENANCE YEAR (Commencing upon Phase Acceptance) For projected Agreement term of April 2, 2013 through April 1, 2012	ANNUAL MAINTENANCE FEES
System Maintenance – Fiscal Year 1 (7/1/13 – 6/30/14) *	\$ 18,323
System Maintenance – Fiscal Year 2 (7/1/14 – 6/30/15)	\$ 64,610
System Maintenance – Fiscal Year 3 (7/1/15 – 6/30/16)	\$ 69,432
System Maintenance – Fiscal Year 4 (7/1/16 – 6/30/17)	\$ 69,432
System Maintenance – Fiscal Year 5 (7/1/17 – 6/30/18)	\$ 69,432
System Maintenance – Fiscal Year 6 (7/1/18 – 6/30/19)	\$ 69,432
System Maintenance – Fiscal Year 7 (7/1/19 – 4/01/20) **	\$ 52,266

MAXIMUM TOTAL – MAINTENANCE FEES	\$ 412,927
---	-------------------

* Maintenance Fees are projected to be paid commencing in Quarter 1 of Fiscal Year 2013-14

** Maintenance Fees reflect \$69,432 prorated to Agreement expiration date of April 1, 2020

3. OPTIONAL WORK

Optional Work shall be provided by Contractor to County in accordance with Task 10 (Provide Optional Work) of Exhibit A (Statement of work). County's payment for Optional work shall not exceed the Maximum Fixed Price agreed to by County and Contractor in each applicable Scope of Work. Travel expenses may be billable by Contractor to County for Optional Work only if they (i) are included in the fees quoted for any applicable Work Order, (ii) are reasonable, (iii) are quoted by Contractor and approved in advance by County, (iv) are based on actual expenditure, and (v) do not exceed County's then current travel expense reimbursement rates.

Any Professional Services provided by Contractor to County as part of Optional Work under the Agreement shall be calculated at the blended Fixed Hourly Rate of \$150.00 per hour (hereinafter "Professional Services Rate"). The Fixed Hourly Rate shall not increase during the term of the Agreement.

Following Contractor's completion and County's approval of Optional Work, Schedule C.1 (Optional Work Schedule) shall be updated to reflect such completed Optional Work and the remaining Pool Dollars. The maximum amount of Pool Dollars that may be expended under this Agreement for Optional Work shall not exceed \$0.00 per year.

SERVICE / PERSONNEL TYPE	HOURS	PRICE
Delivery Consultant	00	000.00
Solutions Architect	00	000.00
Total – Implementation Services		\$ 000.00

4. CONTRACT SUM

Contract Sum shall be County's maximum obligation during the entire term of the Agreement, and shall include (i) the Maintenance Fees and (ii) Pool Dollars for Optional Work that may be provided by Contractor upon County's request and approval. The Contract Sum allocated for the term of the Agreement, including sales tax amounts, if any, is **\$412,927** and includes the following components, rounded off to the nearest dollar:

WORK COMPONENT	CONTRACT SUM
System Maintenance – Maintenance Fees	\$ 412,927
Optional Work – Pool Dollars	0
Maximum Contract Sum	\$ 412,927

EXHIBIT D
PROJECT SCHEDULE

APRIL 2013

EXHIBIT D
PROJECT SCHEDULE
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM (OPIS)

Below is a Project Schedule for Phase Acceptance of the County Pharmacies at the applicable County Facilities, broken down by Fiscal Year (FY) and Quarters (Q) for the projected term of the Agreement from April 2, 2013 through April 1, 2020.

FISCAL YEAR	COUNTY PHARMACY
FY 2013-14	Q1: High Desert MACC (2 sites) Q2: MLK MACC Q3: Humphrey CHC Q3: Rancho Q4: OV/UCLA MC Q4: Mid-Valley CHC Q4: San Fernando HC
FY 2014-15	Q1: Harbor/UCLA MC (3 sites) Q1: Long Beach CHC Q1: Wilmington HC Q2: LAC+USC MC (2 sites) Q2: Hudson CHC Q2: Roybal CHC Q2: El Monte CHC
FY 2015-16 to FY 2019 -20	Q3: 18 DHS Pharmacies Operational with Maintenance and Support

EXHIBIT E

**ADMINISTRATION OF AGREEMENT
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

APRIL 2013

1. COUNTY'S KEY PERSONNEL

AGREEMENT No. _____

COUNTY'S PROJECT DIRECTOR:

Name: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____

COUNTY'S PROJECT MANAGER:

Name: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____

COUNTY'S PROJECT EXECUTIVE:

Name: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____

CONTRACTOR'S KEY PERSONNEL

CONTRACTOR'S PROJECT DIRECTOR:

Name: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____

CONTRACTOR'S PROJECT MANAGER:

Name: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____

CONTRACTOR'S PROJECT EXECUTIVE:

Name: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____

EXHIBIT F

**CONTRACTOR'S EEO CERTIFICATION
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

APRIL 2013

CONTRACTOR’S EEO CERTIFICATION

Contractor's Name

Address

Internal Revenue Service Employer Identification Number**GENERAL**

In accordance with Subchapter VII of the *Civil Rights Act of 1964, 42 USC Sections 2000e through 2000e-17*, and the *Americans with Disabilities Act of 1990*, Contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, color, religion, ancestry, national origin, age, condition of physical or mental disability, marital status, political affiliation or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

**CONTRACTOR'S CERTIFICATION
(check one)**

- | | | | |
|----|--|--|--|
| 1. | The Contractor has a written policy statement prohibiting discrimination in all phases of employment. | YES | NO |
| | | <input checked="checked" type="checkbox"/> | <input type="checkbox"/> |
| 2. | The Contractor periodically conducts a self-analysis or utilization analysis of its work force. | YES | NO |
| | | <input type="checkbox"/> | <input checked="checked" type="checkbox"/> |
| 3. | The Contractor has a system for determining if its employment practices are discriminatory against protected groups. | YES | NO |
| | | <input type="checkbox"/> | <input checked="checked" type="checkbox"/> |
| 4. | Where problem areas are identified in employment practices, the Contractor has a system for taking reasonable corrective action to include establishment of goals or timetables. | YES | NO |
| | | <input checked="checked" type="checkbox"/> | <input type="checkbox"/> |

Wellsoft Corporation

Signature

Date

EXHIBIT G

CONFIDENTIALITY AND ASSIGNMENT AGREEMENT FOR OUTPATIENT PHARMACY INFORMATION SYSTEM (OPIS)

APRIL 2013

CONTRACTOR: _____

1. GENERAL INFORMATION

The organization identified above ("Contractor") is under contract ("Agreement") to provide Work (as such term is defined in the Agreement) to the County of Los Angeles ("County"). County requires each employee, agent, consultant, outsourced vendor and independent contractor (in this Exhibit G "staff") of this Contractor performing Work under such Agreement to understand his/her obligations with respect to the personal, proprietary and other confidential material, data or information, with which he/she will be in contact. Contractor, by executing this Confidentiality and Assignment Agreement ("Confidentiality and Assignment Agreement"), represents that it shall ensure each such staff member's compliance with the obligations regarding such data and information, as set forth in the Agreement, including this Exhibit G.

2. CONTRACTOR ACKNOWLEDGMENT

Contractor understands and agrees that all of Contractor's, or any subcontractor's, staff that will provide Work pursuant to the above-referenced Agreement are Contractor's, or any subcontractor's, sole responsibility. Contractor understands and agrees that its, or any subcontractor's, staff must rely exclusively upon Contractor, or any subcontractor, for payment of salary and any and all other benefits payable by virtue of such staff's performance of Work under the above-referenced Agreement.

Contractor understands and agrees that its, or any subcontractor's, employees are not employees of County for any purpose whatsoever and that such staff do not have and will not acquire any rights or benefits of any kind from County by virtue of performance of Work under the above-referenced Agreement. Contractor understands and agrees that its, or any subcontractor's, staff do not have and will not acquire any rights or benefits from County pursuant to any agreement between any person or entity and County.

3. CONFIDENTIALITY

Contractor, any subcontractor, and their staff, by virtue of performing Work under the above-referenced Agreement, may come in contact with (i) Confidential Information (as such term is defined in the Base Agreement to the Agreement), (ii) data and information, which County has an obligation to keep confidential by applicable law or otherwise, and (iii) proprietary information belonging to other organizations, contractors or their subcontractors doing business with County Contractor, any of its subcontractors (collectively for the purpose of this Exhibit G "Confidential Information"). By signing this Confidentiality and Assignment Agreement, Contractor agrees that, by virtue of involvement in the Work under the Agreement, it, any subcontractor, and their staff shall protect the confidentiality of all such Confidential Information pursuant to the terms of Paragraph 18 (Confidentiality and Security) of the Base Agreement and as specified below.

Contractor agrees, on behalf of itself, its subcontractors and all staff, (i) to protect from loss and hold in confidence any and all Confidential Information; (ii) not to directly or indirectly reveal, report, publish, transfer, reproduce to, or for the benefit of, any unauthorized person or otherwise disclose any Confidential Information obtained while performing Work under the above-referenced Agreement; and (iii) to utilize the Confidential Information solely for the limited purpose of providing Work pursuant to the Agreement. Contractor's, or any subcontractor's, staff

shall forward all requests for disclosure or copying of any such information in their possession or care to County's Project Manager under the Agreement.

Contractor agrees to report to County's Project Manager under the Agreement any and all violations of this Confidentiality and Assignment Agreement, including unauthorized disclosures or copying of Confidential Information, whether accidental or intentional, and whether by Contractor's, or any subcontractor's, staff and/or by any other person, of which such staff become aware. Contractor agrees and shall ensure that its, or any subcontractor's, staff return possession of all Confidential Information to County's Project Manager under the Agreement upon completion of the above-referenced Agreement, or termination of employment with the Contractor, or any subcontractor, whichever occurs first.

4. ASSIGNMENT OF PROPRIETARY RIGHTS

As used in this Agreement, "Products" means any inventions, trade secrets, ideas, original works of authorship or Confidential Information conceived, developed, discovered or made in whole or in part during performance of Work relating to the Agreement by any employee, agent, consultant, outsourced vendor or independent contractor of Contractor, including County Materials (as such term is defined in the Base Agreement to the Agreement). All Products, while produced, shall belong exclusively to Contractor whether or not fixed in a tangible medium of expression. Without limiting the foregoing, to the maximum extent permitted under applicable law, all Products shall be deemed to be "works made for hire" under the United States Copyright Act, and Contractor shall be deemed to be the author thereof.

Contractor agrees to execute all necessary documents and to perform all other acts in order to assign all of Contractor's right, title and interest in the Products in accordance with Paragraph 16.2 (Transfer to County) of the Base Agreement to the Agreement.

SIGNED _____ DATE ____/____/____

PRINTED _____ TITLE _____

EXHIBIT H

**BUSINESS ASSOCIATE AGREEMENT
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

APRIL 2013

**CONTRACTOR'S OBLIGATIONS AS A BUSINESS ASSOCIATE
UNDER
THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996
AND
THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT
(BUSINESS ASSOCIATE AGREEMENT)**

Pursuant to the Agreement for Outpatient Pharmacy Information System (OPIS) by and between the County of Los Angeles (“Covered Entity” or “County”) and _____ (“Business Associate” or “Contractor”), dated _____, 20____, together with all Exhibits, Attachments and Schedules thereto as may be amended from time to time (“Agreement”), Business Associate provides services (“Services”) to Covered Entity and, in order to provide those Services, receives, has access to or creates Protected Health Information.

Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information (“Privacy Regulations”) and the Health Insurance Reform: Security Standards (“Security Regulations”) at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (together “Privacy and Security Regulations”). The Privacy and Security Regulations require Covered Entity to enter into a contract with Business Associate (“Business Associate Agreement”) in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place;

Further, pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“HITECH Act”), effective February 17, 2010, certain provisions of the HIPAA Privacy and Security Regulations apply to Business Associates in the same manner as they apply to Covered Entity, and such provisions must be incorporated into the Business Associate Agreement.

This Business Associate Agreement and the following provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Business Associate in compliance with HIPAA’s Privacy and Security Regulations and the HITECH Act, as they now exist or may hereafter be amended.

Therefore, the parties agree as follows:

DEFINITIONS

- 1.1 “Breach” has the same meaning as the term “breach” in 45 C.F.R. § 164.402.
- 1.2 “Disclose” and “Disclosure” mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate’s internal operations or to other than its employees.
- 1.3 “Electronic Health Record” has the same meaning as the term “electronic health record” in the HITECH Act, 42 U.S.C. Section 17921. Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

- 1.4 “Electronic Media” has the same meaning as the term “electronic media” in 45 C.F.R. §160.103. Electronic Media means (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission. The term “Electronic Media” draws no distinction between internal and external data at rest (that is, in storage) as well as during transmission.
- 1.5 “Electronic Protected Health Information” has the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103. Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; or (ii) maintained in electronic media.
- 1.6 “Individual” means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.7 “Minimum Necessary” refers to the minimum necessary standard in 45 C.F.R. § 164.502 (b) as in effect or as amended.
- 1.8 “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164, also referred to as the Privacy Regulations.
- 1.9 “Protected Health Information” and “PHI” have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity. Protected Health Information includes Electronic Protected Health Information.
- 1.10 “Required By Law” means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required By Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of

information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.

- 1.11 “Security Incident” means the attempted or successful unauthorized access, Use, Disclosure, modification or destruction of information in, or interference with system operations of, an Information System, which contains Electronic Protected Health Information. However, Security Incident does not include attempts to access an Information System when those attempts are not reasonably considered by Business Associate to constitute an actual threat to the Information System.
- 1.12 “Security Rule” means the Security Standards for the Protection of Electronic Health Information also referred to as the Security Regulations at 45 Code of Federal Regulations (C.F.R.) Part 160 and 164.
- 1.13 “Services” the same meaning as in the Base Agreement.
- 1.14 “Unsecured Protected Health Information” has the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402.
- 1.15 “Use” or “Uses” mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate’s internal operations.

Terms used, but not otherwise defined, in this Business Associate Agreement or the Agreement shall have the same meaning as those terms in the Privacy and Security Regulations and the HITECH Act.

OBLIGATIONS OF BUSINESS ASSOCIATE

- 2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:
 - (a) shall Use and Disclose Protected Health Information only as necessary to perform the Services, and as provided in Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 of this Business Associate Agreement;
 - (b) shall Disclose Protected Health Information to Covered Entity upon request;
 - (c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:
 - (i) Use Protected Health Information; and
 - (ii) Disclose Protected Health Information if the Disclosure is Required by Law, or to its agents and/or subcontractors with respect to which the procedures outlined in Section 5.2 of this Business Associate Agreement have been complied.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose or in any manner that would constitute a violation of the Privacy Regulations or the HITECH Act if so Used or Disclosed by Covered Entity.

2.2 Prohibited Uses and Disclosures of Protected Health Information. Business Associate:

- (a) shall not Use or Disclose Protected Health Information for fundraising or marketing purposes.
- (b) shall not disclose Protected Health Information to a health plan for payment or health care operations purposes if the Individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates.
- (c) shall not directly or indirectly receive payment in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. This prohibition shall not affect payment by Covered Entity to Business Associate. Covered Entity shall not provide such written consent except upon express approval of the departmental privacy officer and only to the extent permitted by law, including HIPAA and the HITECH Act.

2.3 Adequate Safeguards for Protected Health Information. Business Associate:

- (a) shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Business Associate Agreement. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the Minimum Necessary in accordance with the Privacy and Security Regulation's minimum necessary standard as in effect or as amended.
- (b) as to Electronic Protected Health Information, shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information. Effective February 17, 2010, said safeguards shall be in accordance with 45 C.F.R. §§ 164.308, 164.310, and 164.312 and shall comply with the Security Rule's policies and procedure and documentation requirements.

2.4 Reporting Non-Permitted Use or Disclosure and Security Incidents and Breaches of Unsecured Protected Health Information. Business Associate:

- (a) shall report to Covered Entity each Use or Disclosure of Protected Health Information that is made by Business Associate, its employees, representatives, agents, subcontractors, or other parties under Business Associate's control with Access to Protected Health Information, but which is not specifically permitted by this Business Associate Agreement or otherwise Required By law
- (b) shall report to Covered Entity each Security Incident of which Business Associate becomes aware.
- (c) shall notify Covered Entity of each Breach by Business Associate, its employees, representatives, agents or subcontractors of Unsecured Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been

known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of the Business Associate as determined in accordance with the federal common law of agency.

- 2.4.1 **Immediate Telephonic Report.** Except as provided in Section 2.4.3, notification shall be made immediately upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident or Breach of Unsecured Protected Health Information by telephone call to (562) 940-3335.
- 2.4.2 **Written Report.** Except as provided in Section 2.4.3, the initial telephonic notification shall be followed by written notification made without unreasonable delay and in no event later than three (3) business days from the date of discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident, or Breach by the Business Associate to the Chief Privacy Officer at:

Chief Privacy Officer
Kenneth Hahn Hall of Administration
500 West Temple Street
Suite 525
Los Angeles, California 90012
HIPAA@auditor.lacounty.gov
(213) 974-2166

- (a) The notification required by Section 2.4 shall include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used, or Disclosed; and
- (b) the notification required by Section 2.4 shall include, to the extent possible, all information required to provide notification to the Individual under 45 C.F.R. § 164.404(c), including:
- (i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - (ii) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - (iii) Any other details necessary to conduct an assessment of whether there is a risk of harm to the Individual;
 - (iv) Any steps Business Associate believes that the Individual could take to protect him or herself from potential harm resulting from the Breach;

- (v) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to the Individual, and to protect against any further Breaches; and
- (vi) The name and contact information for the person most knowledgeable regarding the facts and circumstances of the Breach.

If Business Associate is not able to provide the information specified in Section 2.4.2 (a) or (b) at the time of the notification required by Section 2.4.2, Business Associate shall provide such information promptly thereafter as such information becomes available.

- 2.4.3 Request for Delay by Law Enforcement. Business Associate may delay the notification required by Section 2.4 if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security. If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay notification, notice, or posting for the time period specified by the official; if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in this section is submitted during that time.
- 2.5 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent required by law, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement.
- 2.6 Breach Notification. Business Associate shall reimburse Covered Entity for any and all reasonable costs incurred by Covered Entity providing notification to the individual under 45 C.F.R. 164.404(c) and in compliance with Covered Entity's obligations under Subpart D, Notification in the Case of a Breach of Unsecured Protected Health Information, of the Privacy and Security Regulations, internet posting, and/or media publication, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose Protected Health Information has or may have been compromised as a result of Business Associate's Breach of Unsecured Protected Health Information.
- 2.7 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.
- 2.8 Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy

that Protected Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within twenty (20) days after receipt of request from Covered Entity, or such longer time (not to exceed ten (10) additional days) as Covered Entity may authorize in writing. Business Associate shall provide copies of that Protected Health Information within twenty (20) days after receipt of request from Covered Entity, or such longer time (not to exceed ten (10) additional days) as Covered Entity may authorize in writing. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.

- 2.9 Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a “designated record set” as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within twenty (20) days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526, or such longer time (not to exceed ten (10) additional days) as Covered Entity may authorize in writing.
- 2.10 Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives, or subcontractors in order to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and/or the HITECH Act which requires an Accounting of Disclosures of Protected Health Information maintained in an Electronic Health Record for treatment, payment, and health care operations.

Any accounting provided by Business Associate under this Section 2.10 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.10, Business Associate shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of request from Covered Entity, information collected in accordance with this Section 2.10 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.

- 2.11 Indemnification. Business Associate shall indemnify, defend, and hold harmless Covered Entity, including its elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, penalties and fines (including regulatory penalties and/or fines), and expenses (including attorney and expert witness fees) to the extent arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement; Business Associate's obligations under this provision extend to compliance and/or enforcement actions of Secretary of the federal Department of Health and Human Services and/or Office for Civil Rights.

OBLIGATION OF COVERED ENTITY

- 3.1 Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

TERM AND TERMINATION

- 4.1 Term. The term of this Business Associate Agreement shall be the same as the term of the Services Agreement. Business Associate's obligations under Sections 4.3, and with respect to any Protected Health Information under Section 4.3(b), Sections 2.1 (as modified by Section 4.2), 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 4.3 and 5.2 shall survive the termination or expiration of this Agreement, to the extent that return or destruction of Protected Health Information is not feasible.
- 4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in the Agreement, upon either party's knowledge of a material breach of this Business Associate Agreement by the other party, the party with knowledge of the other party's breach shall either:
- (a) Provide an opportunity for the breaching party to cure the breach or end the violation and terminate the Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;
 - (b) Immediately terminate the Agreement if a party has breached a material term of this Business Associate Agreement and cure is not possible; or
 - (c) If neither termination nor cure is feasible, report the violation to the Secretary of the federal Department of Health and Human Services.
- 4.3 Disposition of Protected Health Information upon Termination or Expiration.
- (a) Except as provided in paragraph (b) of this Section 4.3, upon termination for any reason or expiration of the Agreement, Business Associate shall return or destroy all Protected Health Information, received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

MISCELLANEOUS

- 5.1 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to agree to the same restrictions that apply to Business Associate with respect to Protected Health Information.
- 5.3 Relationship to Services Agreement Provisions. In the event that a provision of this Business Associate Agreement is contrary to a provision of the Agreement, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of the Agreement.
- 5.4 Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy or Security Regulations means the section as in effect or as amended.
- 5.5 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Regulations.
- 5.6 Amendment. The parties agree to amend this Business Associate Agreement in accordance with the body of this Agreement, from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Regulations and other privacy laws governing Protected Health Information.

EXHIBIT I

**SAFELY SURRENDERED BABY LAW
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

APRIL 2013

Safely Surrendered



No shame. No blame. No names.

In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723

www.babysafela.org



Safely Surrendered Baby Law

What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents or other persons, with lawful custody, which means anyone to whom the parent has given permission to confidentially surrender a baby. As long as the baby is three days (72 hours) of age or younger and has not been abused or neglected, the baby may be surrendered without fear of arrest or prosecution.

In Los Angeles County: 1 877 BABY SAFE 1 877 222 9723

www.babysafela.org

How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially, and safely surrender a baby within three days (72 hours) of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their baby within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

Can only a parent bring in the baby?

No. While in most cases a parent will bring in the baby, the Law allows other people to bring in the baby if they have lawful custody.

Does the parent or surrendering adult have to call before bringing in the baby?

No. A parent or surrendering adult can bring in a baby anytime, 24 hours a day, 7 days a week, as long as the parent or surrendering adult surrenders the baby to someone who works at the hospital or fire station.

Does the parent or surrendering adult have to tell anything to the people taking the baby?

No. However, hospital or fire station personnel will ask the surrendering party to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the baby. The questionnaire includes a stamped return envelope and can be sent in at a later time.

What happens to the baby?

The baby will be examined and given medical treatment. Upon release from the hospital, social workers immediately place the baby in a safe and loving home and begin the adoption process.

What happens to the parent or surrendering adult?

Once the parent or surrendering adult surrenders the baby to hospital or fire station personnel, they may leave at any time.

Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned, hurt or killed by their parents. You may have heard tragic stories of babies left in dumpsters or public bathrooms. Their parents may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had no one or nowhere to turn for help, they abandoned their babies. Abandoning a baby is illegal and places the baby in extreme danger. Too often, it results in the baby's death. The Safely Surrendered Baby Law prevents this tragedy from ever happening again in California.

A baby's story

Early in the morning on April 9, 2005, a healthy baby boy was safely surrendered to nurses at Harbor-UCLA Medical Center. The woman who brought the baby to the hospital identified herself as the baby's aunt and stated the baby's mother had asked her to bring the baby to the hospital on her behalf. The aunt was given a bracelet with a number matching the anklet placed on the baby; this would provide some identification in the event the mother changed her mind about surrendering the baby and wished to reclaim the baby in the 14-day period allowed by the Law. The aunt was also provided with a medical questionnaire and said she would have the mother complete and mail back in the stamped return envelope provided. The baby was examined by medical staff and pronounced healthy and full-term. He was placed with a loving family that had been approved to adopt him by the Department of Children and Family Services.



Ley de Entrega de Bebés *Sin Peligro*

Los recién nacidos pueden ser entregados en forma segura al personal de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles

Sin pena. Sin culpa. Sin nombres.

En el Condado de Los Ángeles: 1-877-BABY SAFE • 1-877-222-9723
www.babysafela.org

Ley de Entrega de Bebés Sin Peligro

¿Qué es la Ley de Entrega de Bebés sin Peligro?

La Ley de Entrega de Bebés sin Peligro de California permite la entrega confidencial de un recién nacido por parte de sus padres u otras personas con custodia legal, es decir cualquier persona a quien los padres le hayan dado permiso. Siempre que el bebé tenga tres días (72 horas) de vida o menos, y no haya sufrido abuso ni negligencia, pueden entregar al recién nacido sin temor de ser arrestados o procesados.

Cada recién nacido se merece la oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele que tiene otras opciones. Hasta tres días (72 horas) después del nacimiento, se puede entregar un recién nacido al personal de cualquier hospital o cuartel de bomberos del condado de Los Angeles.

En el Condado de Los Ángeles: 1-877-BABY SAFE • 1-877-222-9723

www.babysafela.org

¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura dentro de los tres días (72 horas) del nacimiento. El bebé debe ser entregado a un empleado de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazaletes y el padre/madre o el adulto que lo entregue recibirá un brazaletes igual.

¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden comenzar el proceso de reclamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Ángeles al 1-800-540-4000.

¿Sólo los padres podrán llevar al recién nacido?

No. Si bien en la mayoría de los casos son los padres los que llevan al bebé, la ley permite que otras personas lo hagan si tienen custodia legal.

¿Los padres o el adulto que entrega al bebé deben llamar antes de llevar al bebé?

No. El padre/madre o adulto puede llevar al bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, siempre y cuando entreguen a su bebé a un empleado del hospital o cuartel de bomberos.

¿Es necesario que el padre/madre o adulto diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital o cuartel de bomberos le pedirá a la persona que entregue al bebé que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para cuidar bien del bebé. El cuestionario incluye un sobre con el sello postal pagado para enviarlo en otro momento.

¿Qué pasará con el bebé?

El bebé será examinado y le brindarán atención médica. Cuando le den el alta del hospital, los trabajadores sociales inmediatamente ubicarán al bebé en un hogar seguro donde estará bien atendido, y se comenzará el proceso de adopción.

¿Qué pasará con el padre/madre o adulto que entregue al bebé?

Una vez que los padres o adulto hayan entregado al bebé al personal del hospital o cuartel de bomberos, pueden irse en cualquier momento.

¿Por qué se está haciendo esto en California? ?

La finalidad de la Ley de Entrega de Bebés sin Peligro es proteger a los bebés para que no sean abandonados, lastimados o muertos por sus padres. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Los padres de esos bebés probablemente hayan estado pasando por dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus bebés porque tenían miedo y no tenían nadie a quien pedir ayuda. El abandono de un recién nacido es ilegal y pone al bebé en una situación de peligro extremo. Muy a menudo el abandono provoca la muerte del bebé. La Ley de Entrega de Bebés sin Peligro impide que vuelva a suceder esta tragedia en California.

Historia de un bebé

A la mañana temprano del día 9 de abril de 2005, se entregó un recién nacido saludable a las enfermeras del Harbor-UCLA Medical Center. La mujer que llevó el recién nacido al hospital se dio a conocer como la tía del bebé, y dijo que la madre le había pedido que llevara al bebé al hospital en su nombre. Le entregaron a la tía un brazaletes con un número que coincidía con la pulsera del bebé; esto serviría como identificación en caso de que la madre cambiara de opinión con respecto a la entrega del bebé y decidiera recuperarlo dentro del período de 14 días que permite esta ley. También le dieron a la tía un cuestionario médico, y ella dijo que la madre lo llenaría y lo enviaría de vuelta dentro del sobre con franqueo pagado que le habían dado. El personal médico examinó al bebé y se determinó que estaba saludable y a término. El bebé fue ubicado con una buena familia que ya había sido aprobada para adoptarlo por el Departamento de Servicios para Niños y Familias.



EXHIBIT J

**ESCROW AGREEMENT
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

APRIL 2013

EXHIBIT K

**JURY SERVICE ORDINANCE
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

APRIL 2013

Title 2 ADMINISTRATION
Chapter 2.203.010 through 2.203.090
CONTRACTOR EMPLOYEE JURY SERVICE

2.203.010 Findings.

The board of supervisors makes the following findings. The county of Los Angeles allows its permanent, full-time employees unlimited jury service at their regular pay. Unfortunately, many businesses do not offer or are reducing or even eliminating compensation to employees who serve on juries. This creates a potential financial hardship for employees who do not receive their pay when called to jury service, and those employees often seek to be excused from having to serve. Although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials. This reduces the number of potential jurors and increases the burden on those employers, such as the county of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the county of Los Angeles has determined that it is appropriate to require that the businesses with which the county contracts possess reasonable jury service policies. (Ord. 2002-0015 § 1 (part), 2002)

2.203.020 Definitions.

The following definitions shall be applicable to this chapter:

- A. “Contractor” means a person, partnership, corporation or other entity which has a contract with the county or a subcontract with a county contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more such contracts or subcontracts.
- B. “Employee” means any California resident who is a full-time employee of a contractor under the laws of California.
- C. “Contract” means any agreement to provide goods to, or perform services for or on behalf of, the county but does not include:
 - 1. A contract where the board finds that special circumstances exist that justify a waiver of the requirements of this chapter; or
 - 2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor; or
 - 3. A purchase made through a state or federal contract; or
 - 4. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, or reseller, and must match and inter-member with existing supplies, equipment or systems maintained by the county pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-3700 or a successor provision; or

Title 2 ADMINISTRATION
Chapter 2.203.010 through 2.203.090
CONTRACTOR EMPLOYEE JURY SERVICE

5. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, Section 4.4.0 or a successor provision; or
 6. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-2810 or a successor provision; or
 7. A non-agreement purchase with a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section A-0300 or a successor provision; or
 8. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section PP-1100 or a successor provision.
- D. “Full time” means 40 hours or more worked per week, or a lesser number of hours if:
1. The lesser number is a recognized industry standard as determined by the chief administrative officer, or
 2. The contractor has a long-standing practice that defines the lesser number of hours as full time.
- E. “County” means the county of Los Angeles or any public entities for which the board of supervisors is the governing body. (Ord. 2002-0040 § 1, 2002: Ord. 2002-0015 § 1 (part), 2002)

2.203.030 Applicability.

This chapter shall apply to contractors who enter into contracts that commence after July 11, 2002. This chapter shall also apply to contractors with existing contracts which are extended into option years that commence after July 11, 2002. Contracts that commence after May 28, 2002, but before July 11, 2002, shall be subject to the provisions of this chapter only if the solicitations for such contracts stated that the chapter would be applicable. (Ord. 2002-0040 § 2, 2002: Ord. 2002-0015 § 1 (part), 2002)

2.203.040 Contractor Jury Service Policy.

A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees’ regular pay the fees received for jury service. (Ord. 2002-0015 § 1 (part), 2002)

Title 2 ADMINISTRATION
Chapter 2.203.010 through 2.203.090
CONTRACTOR EMPLOYEE JURY SERVICE

2.203.050 Other Provisions.

- A. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of county counsel, issue interpretations of the provisions of this chapter and shall issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other county departments.
- B. Compliance Certification. At the time of seeking a contract, a contractor shall certify to the county that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract. (Ord. 2002-0015 § 1 (part), 2002)

2.203.060 Enforcement and Remedies.

For a contractor's violation of any provision of this chapter, the county department head responsible for administering the contract may do one or more of the following:

- 1. Recommend to the board of supervisors the termination of the contract; and/or,
- 2. Pursuant to chapter 2.202, seek the debarment of the contractor. (Ord. 2002-0015 § 1 (part), 2002)

2.203.070. Exceptions.

- A. Other Laws. This chapter shall not be interpreted or applied to any contractor or to any employee in a manner inconsistent with the laws of the United States or California.
- B. Collective Bargaining Agreements. This chapter shall be superseded by a collective bargaining agreement that expressly so provides.
- C. Small Business. This chapter shall not be applied to any contractor that meets all of the following:
 - 1. Has ten or fewer employees during the contract period; and,
 - 2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are less than \$500,000; and,
 - 3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

“Dominant in its field of operation” means having more than ten employees and annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, exceed \$500,000.

“Affiliate or subsidiary of a business dominant in its field of operation” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation. (Ord. 2002-0015 § 1 (part), 2002)

2.203.090. Severability.

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 2002-0015 § 1 (part), 2002)

ATTACHMENT A.1
SYSTEM REQUIREMENTS
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)

APRIL 2013

1. FUNCTIONAL REQUIREMENTS

REQUIREMENT ID	REQUIREMENT DESCRIPTION
F-1	System must provide a solution to enable County Pharmacies to aggregate prescriptions from multiple County Pharmacies to a centralized database to provide easy transfer of prescriptions within County Pharmacies and to an offsite location of County's Central Fill Services provider in a secure manner complying with all Federal and State regulations.
F-2	System must have the ability to handle Central Fill prescription orders which will be: <ul style="list-style-type: none"> • Assembled • Verified • Packaged • And delivered back to the originating County Pharmacy in a patient-ready manner; or • Mailed directly to the patient
F-3	System must be complete with workflow configuration based on the need of the pharmacies, focusing on the following areas: <ul style="list-style-type: none"> • Reception (patient drop-off) • Data Entry • Product Dispensing • Verification • Release to patient (patient pick-up)
F-4	System should have the ability to manage inventory costs and maximize utilization of resources.
F-5	System should provide the ability to balance workload of County Pharmacies that are using the Central Fill Services.
F-6	System must support Bar Code Technology.
F-7	Intentionally Omitted.
F-8	System must have the ability to provide onscreen alerts, as required by Federal and State regulations.
F-9	System must have the ability to detect, at a minimum, missing patient name, date of birth or identification number in the patient profile and alert the user. Patient information set as required must be alerted/prompted to the user if missing/incomplete.
F-10	System must comply with the California State "CURES" program requirements.

F-11	System must comply with black box warning and medication guide distribution policies per California State Board of Pharmacy.
F-12	System must have the ability to record the transfer of a prescription to a retail pharmacy in compliance with Federal and State regulations (transfer outside the County pharmacy network).
F-13	System must generate a patient label with County issued patient specific Medical Record Number (MRN).
F-14	System shall print patient leaflet/drug information sheets automatically or on demand. Printed consultation notes or medication instructions can be customized per patient or drug use and able to be printed in English and Spanish concurrently.
F-15	System must have the ability to print labels according to the Federal and State regulations. Patient instructions (SIG) shall be printed in both English and Spanish concurrently with County's ability to configure a third language of County's choice.
F-16	System shall have the ability to record notes and comments from users on a patient's profile.
F-17	System must bar-code verify specific patient medication order to medical record number on patient drug profile when patient picks up the medication. System must proactively alert, implement a hard stop and log all exception transactions in this process with user level reporting.

2. SYSTEM REQUIREMENTS

REQUIREMENT ID	REQUIREMENT DESCRIPTION
S-1	Intentionally Omitted.
S-2	System must be centralized for data and reporting which is HIPAA-compliant.
S-3	System must have a small footprint.
S-4	System shall provide a multi-level security system to ensure the confidentiality of all patient related information and control access to the System functions and features.
S-5	System must have redundant storage capabilities.
S-6	The System shall restrict access to specific areas of the application based on the System function to be performed.

S-7	The System shall restrict access to patient records based on user security level access.
S-8	The System shall allow for password protection at different levels.
S-9	The System shall restrict access to configuration tables, profile indexes, etc. to designated personnel via security controls.
S-10	The System shall maintain an automated system log of user sign-on activity.
S-11	The System shall maintain an audit trail for system entries including user code, date and time of each System transaction.
S-12	The System shall adhere to all HIPAA regulations including recording of any access (inquiries included) into patient's electronic record.
S-13	The System shall automatically log off from an automated process and terminate electronic sessions after a predetermined time of inactivity.
S-14	The System must assign a unique name and number for each user for identifying and tracking user activity and identity.
S-15	The System must force password changes every 90 days, and the passwords may be maintained in Active Directory.
S-16	The System must have a password length of eight characters with both upper and lower case letter and special character.
S-17	The System shall be kept free of critical security vulnerabilities.
S-18	The System shall have the ability to be scanned for vulnerabilities as follows: <ul style="list-style-type: none"> • Workstations shall have the ability to be scanned every two weeks • Servers shall have the ability to be scanned every month
S-19	The System's high risk vulnerabilities shall be remediated within two weeks, medium impact vulnerabilities shall be remediated within one month, and low impact vulnerabilities shall be remediated within two months.
S-20	The System shall provide for redundant processing capabilities to protect against processor failures by utilizing redundant servers and hard drives.
S-21	The System shall provide the ability to archive System data.
S-22	The System shall provide scheduled maintenance procedures.
S-23	The System shall provide processes and functionality for upgrades and corrections

S-24	The System shall provide sufficient back-up and recovery features to assure minimal data loss due to a System failure, power outage, etc
S-25	The System shall provide online access to documentation for support staff including System overviews, design, flowcharts and file layouts together with a local copy for local access.
S-26	The System shall support HL7 (Health Level 7) healthcare industry system integration standards.
S-27	The System shall support scanning of prescription orders.
S-28	The System shall support scanning of scripts in color at 300x300 image resolution
S-29	System must be capable of providing read-only access to the database to populate County's medication reconciliation and dispensing reporting application (e.g., PADI).

3. SYSTEM HARDWARE REQUIREMENTS

REQUIREMENT ID	REQUIREMENT DESCRIPTION
SH-1	<p><u>Main Production Server:</u></p> <ul style="list-style-type: none"> • Processor: Four (4) Multi-Core Intel® Xeon® 5XXX processors, 4MB cache or better • Front side bus: 800MHz • Memory: 16.0GB • Storage: 300GB (system) + 3TB (based on chain prescription volume) mirrored on RAID 5 for data. • (For optimal performance, it is recommended that the operating system is installed on a separate drive.) • Drive controller: Dual Channel Ultra 320 SCSI • Networking: Intel Pro/1000MT Dual Port Gigabit Network Adapter or equivalent • Typical system: PowerEdge T610 (tower or 5U rack mountable server) • Typical price: \$25,000 (not including the OS license, monitor, keyboard & mouse)

SH-2	<u>Backup Server:</u> <ul style="list-style-type: none"> • Processor: Four (4) Multi-Core Intel® Xeon® 5XXX processors, 4MB cache or better • Front side bus: 800MHz • Memory: 16.0GB • Storage: 300GB (system) + 3TB (based on chain prescription volume) mirrored on RAID 5 for data. • (For optimal performance, it is recommended that the operating system is installed on a separate drive.) • Drive controller: Dual Channel Ultra 320 SCSI • Networking: Intel Pro/1000MT Dual Port Gigabit Network Adapter or equivalent • Typical system: PowerEdge T610 (tower or 5U rack mountable server) • Typical price: \$25,000 (not including the OS license, monitor, keyboard & mouse)
SH-3	<u>Test Server and Training Server:</u> <ul style="list-style-type: none"> • Processor: Four (4) Multi-Core Intel® Xeon® 5XXX processors, 4MB cache or better • Front side bus: 800MHz • Memory: 16.0GB • Storage: 300GB (system) + 3TB (based on chain prescription volume) mirrored on RAID 5 for data. (For optimal performance, it is recommended that the operating system is installed on a separate drive.) • Drive controller: Dual Channel Ultra 320 SCSI • Networking: Intel Pro/1000MT Dual Port Gigabit Network Adapter or equivalent • Typical system: PowerEdge T610 (tower or 5U rack mountable server) • Typical price: \$25,000 (not including the OS license, monitor, keyboard & mouse)
SH-4	<u>Workstation:</u> <ul style="list-style-type: none"> • Processor: Intel® Pentium® Multi-Core Processor, 1.6GHz or better • Front side bus: 1066MHz • Memory: 4.0GB • Storage: 80GB • Networking: Com 3C920 Integrated Fast Ethernet Controller or equivalent • Typical system: Dell Optiplex 780 • Typical price: \$1,200 (not including the OS license, monitor, keyboard & mouse)

4. SYSTEM SOFTWARE REQUIREMENTS

REQUIREMENT ID	REQUIREMENT DESCRIPTION
SS-1	<u>Main Production Server:</u> <ul style="list-style-type: none">Operating system: Microsoft® Windows® Server 2003/ 64 Bit Enterprise Edition or later
SS-2	<u>Backup Server:</u> <ul style="list-style-type: none">Operating system: Microsoft® Windows® Server 2003/ 64 Bit Enterprise Edition or later
SS-3	<u>Test Server and Training Server:</u> <ul style="list-style-type: none">Operating system: Microsoft® Windows® Server 2003/ 64 Bit Enterprise Edition or later
SS-4	<u>Workstation:</u> <ul style="list-style-type: none">Operating system: Windows® 7 Professional or Ultimate only 32 bit editions
SS-5	<u>System Database:</u> <ul style="list-style-type: none">Microsoft® SQL Server Enterprise Edition

5. NETWORK BANDWIDTH REQUIREMENTS

REQUIREMENT ID	REQUIREMENT DESCRIPTION
NB-1	A minimum of, or the equivalent of, a full T1 line (1.5 megabits per second) from each store to the central location.

6. INTERFACE REQUIREMENTS

REQUIREMENT ID	REQUIREMENT DESCRIPTION
I-1	System must be capable of establishing an interface with County's current Admission, Discharge and Transfer system. The system must have the ability to establish an interface using HL-7 (e.g., Affinity).
I-2	System must be capable of establishing an interface with County's medication automation counting technology (Parata).

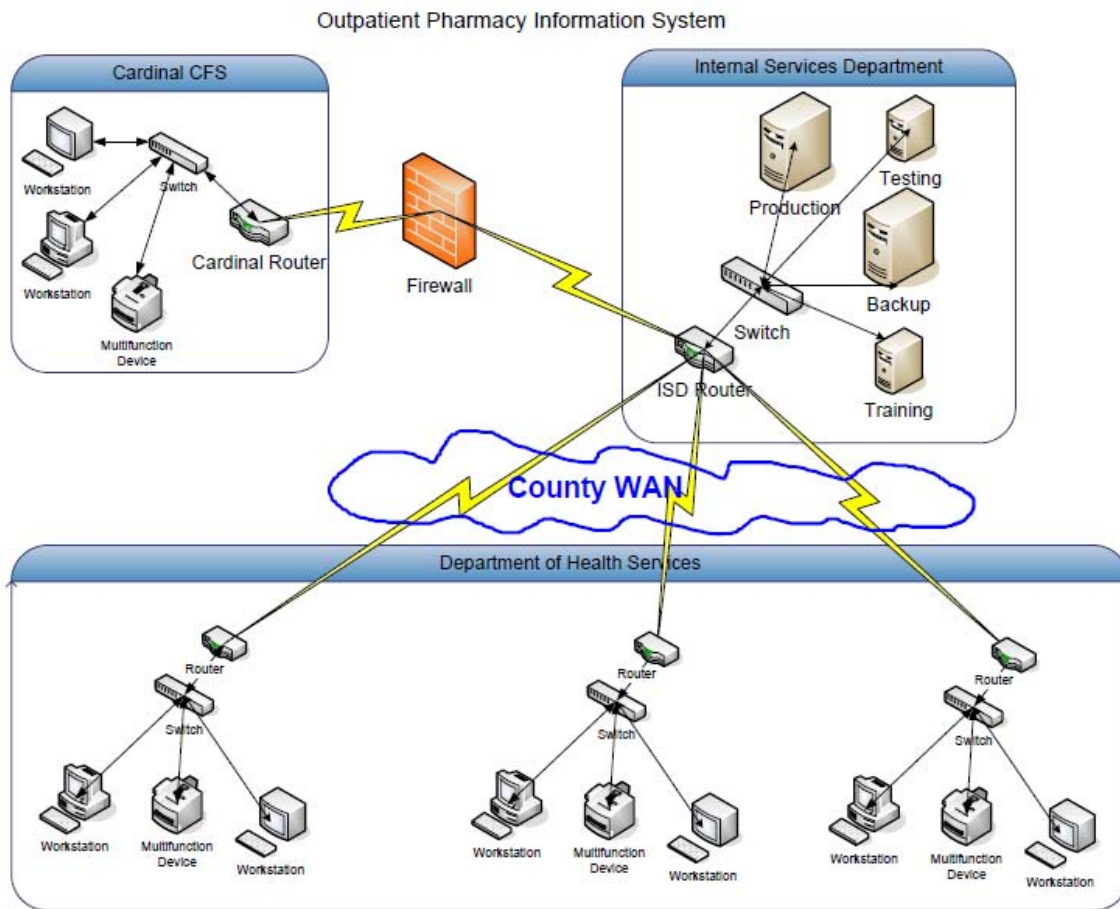
I-3	System must be capable of establishing an interface with County's patient notification system (TransLux, QFlow).
I-4	System must be capable of establishing an interface with County's current pharmaceutical claims switch vendors (e.g., Relay Health, DAA).
I-5	System must be capable of establishing an interface with County's prescription refill request/notification vendor (Voice-Tech).
I-6	Intentionally Omitted.
I-7	Intentionally Omitted.
I-8	System must be capable of establishing an interface with County's drug wholesaler (e.g., Cardinal).
I-9	Intentionally Omitted.
I-10	Intentionally Omitted.

6. SYSTEM PERFORMANCE REQUIREMENTS

Requirement ID	Requirement Description
SP-1	System Availability shall be ninety-nine and one half percent (99.5%).
SP-2	System shall comply with response time baseline established by County and Contractor.
SP-3	System must have some form of disaster recovery, established prior to First Productive Use.
SP-4	System must have some form of business continuity established prior to First Productive Use.

ATTACHMENT A.2
SYSTEM ARCHITECTURE
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)

APRIL 2013



ATTACHMENT A.3
SOFTWARE CONFIGURATION
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)

APRIL 2013

1. CERNER ETREBY

- a. Etreby Pharmacy Solutions
- b. Etreby Chain Host Systems with WAN
- c. eSignature
- d. e-Prescribing for Chains
- e. Etreby Inventory Control
- f. Auto Dispensing Machine Interface for Chain – Parata
- g. EDI x12 Wholesaler Interface for Chain – Cardinal
- h. IVR Interface for Chain – Voice Tech
- i. Custom Interface (Chain) – single HL7 from Affinity
Patient demographic information to populate Cerner Etreby
- j. Custom Interface (Chain) – Qflow
Future state pharmacy line management software
- k. Custom Interface (Chain) – TansLux
Current state pharmacy line management software
- l. Custom Interface – PSCAS Clinical Database*
 - 1. PSCAS Clinical Database
 - 2. View only access to the Cerner Etreby database table
- m. Custom Interface – Data Repository*
Data Repository NCPDP D.0 format data to populate clinical applications

*Created and maintained by County with Contractor's assistance

ATTACHMENT A.4

COUNTY PHARMACIES

FOR

APRIL 2013

Contractor shall provide Software according to Exhibit A (Statement of Work) and other Work under the Agreement for the following County Pharmacies:

HIGH DESERT MULTI-SERVICE AMBULATORY CARE CENTER (HD MACC)

1. HD MACC Pharmacy #1
44900 N. 60th St W
Lancaster, CA 93536
2. HD Hospital Pharmacy #1 (which is to be the Pilot Pharmacy)
44900 N. 60th St W
Lancaster, CA 93536

MARTIN LUTHER KING JR. MULTI-SERVICE AMBULATORY CARE CENTER (MLK MACC)

1. MLK MACC Pharmacy
12021 S Wilmington Ave
Los Angeles, CA 90059
2. Humphrey CHC Pharmacy
5850 S Main St
Los Angeles, CA 90003

RANCHO LOS AMIGOS

1. Rancho Los Amigos National Rehabilitation Center Pharmacy
7601 E Imperial Hwy Building 100, Room 123A
Downey, CA 90242

LOS ANGELES COUNTY + UNIVERSITY OF SOUTHERN CALIFORNIA

1. LAC+USC Med Center Outpatient Pharmacy (2P82)
2010 Zonal Ave
Los Angeles, CA 90033
2. LAC+USC Clinical Tower Outpatient Pharmacy
1100 N State St
Los Angeles, CA 90033
3. Roybal CHC Pharmacy
245 S. Fetterly Ave., room 1401
Los Angeles, CA 90022
4. Hudson CHC Pharmacy
2829 S Grand Ave
Los Angeles, CA 90007

5. El Monte CHC Pharmacy
10953 Ramona Blvd.
El Monte, CA 91731

HARBOR – UNIVERSITY OF CALIFORNIA, LOS ANGELES

1. HUMC Med Ctr O/P Phar
1000 W. Carson St
Torrance, CA 90509
2. HUMC Family Medical CHC Pharmacy
1403 Lomita Blvd
Harbor City, CA 90710
3. HUMC N22 Pharmacy
1000 W. Carson St
Torrance, CA 90509
4. Wilmington CHC Pharmacy
1325 Broad Ave
Wilmington, CA 90744
5. Long Beach Comp Health Ctr Pharmacy
1333 Chestnut Ave
Long Beach, CA 90813

OLIVEVIEW – UNIVERSITY OF CALIFORNIA AT LOS ANGELES

1. OVMC Medical Center Pharmacy
14445 Olive View Dr
Sylmar, CA 91342
2. Mid Valley CHC Pharmacy
7515 Van Nuys Blvd
Van Nuys, CA 91405
3. San Fernando CHC Pharmacy
1212 Pico Ave
San Fernando, CA 91340

SERVER

At County's request Contractor also shall provide Software according to Exhibit A (Statement of Work), at a County facility(s) site for server implementation.

OTHER

Contractor also shall provide Software according to Exhibit A (Statement of Work), at County's request, to any additional County Pharmacies that may be established during the term of this Agreement. The addition of any such pharmacies to this Agreement shall be memorialized via a Change Notice or Amendment, as applicable, as set forth in Paragraph 4 (Change Notices and Amendments) of the Base Agreement.

ATTACHMENT A.5

CHANGE NOTICE TEMPLATE

FOR

**OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

APRIL 2013

CHANGE NOTICE NO. _____
 VERSION NO. _____

CHANGE NOTICE

OUTPATIENT PHARMACY INFORMATION SYSTEM (OPIS) FOR CENTRAL FILL SERVICES

Pursuant to Paragraph 4.2 (Change Notices) of the Base Agreement

Date Request Submitted	Approximate Date to Initiate Optional Work ⁽¹⁾	Change Notice Title

Change Category:

☐ Roles/Responsibilities⁽²⁾

☐ Data Sharing⁽²⁾

☐ Other (describe): _____

Pool Dollars Required? ☐ Yes ☐ No

Change Notice Required *? ☐ Yes ☐ No

*pursuant to Paragraph 4.2 (Change Notice) of the Base Agreement

Cost:

One Time Not to Exceed Maximum Fixed Price: \$0

Additional Operations and Maintenance Fees? ☐ Yes ☐ No

If yes, not to exceed additional maintenance fees per quarter⁽³⁾: _____

In the event of any conflict between the provisions of the Agreement and the Task and Deliverables as completed for this Change Notice, the provisions of the Agreement shall govern.

County proposes the following changes affecting OPIS:

Original Requirement # (if applicable)	Type of Change (Add, Change, Delete)	Description of Change(s) – Attach Additional Specifications if Necessary

Justification(s) for Change:

<p>1.</p>

For planning purposes, the estimated use of Contractor resources, and if applicable County resources required to complete the Work under this Change Notice, including testing/validating modifications and applicable Training:

<p>No additional resources required</p>

Attachments list supporting documentation and any written proposal submitted by Contractor

Attachment ID	Documentation Description

Approvals (Sign/Print):

County's Project Director	(Print Name)	Date
County Counsel (as to form)	(Print Name)	

Approval Comments:

From	Comment

Footnotes:

- ⁽¹⁾ Work cannot be initiated prior to the date the Change Notice is accepted by Contractor and all required County approvals have been obtained.
- ⁽²⁾ Requires additional approvals from CIO, County Counsel and CEO.
- ⁽³⁾ Cost estimate calculated by the Maximum Fixed Priced” cost quoted times 18% divided by 4. Operations and Maintenance Fees shall be based on the actual Change Notice amount invoiced.
- ⁽⁴⁾ If applicable, County’s Project Director’s signature confirms the following:
- i. Designation as signatory from Interim Director or designee
 - ii. Concurrence from Department of Health Services with attached documentation supporting concurrence

Distribution:

- County’s Project Manager
- County’s Project Director
- Cardinal Health Pharmacy Services, LLC.
- County Counsel (as to form)

ATTACHMENT A.6

ACCEPTANCE CERTIFICATE

FOR

**OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

APRIL 2013



ATTACHMENT A.6 – ACCEPTANCE CERTIFICATE

ACCEPTANCE CERTIFICATE

Agreement Name OUTPATIENT PHARMACY INFORMATION SYSTEM (OPIS) FOR CENTRAL FILL SERVICES		Contract Number	
Contractor Name and Address: <u>Cerner Healthcare Solutions, Inc.</u>		Transmittal Date	
FROM:	Contractor's Project Manager	TO:	County's Project Manager
Name:		Name:	
Telephone:		Department Name:	
Signature (Required):		Division Name:	

Contractor hereby certifies to County that as of the date of this Acceptance Certificate, it has satisfied all conditions precedent in the Agreement, including the Exhibits thereto, to the completion and delivery of the Deliverables set forth below, including satisfaction of the completion criteria applicable to such Deliverables and County's approval of the work performed in connection with the achievement of such Deliverables. Contractor further represents and warrants that the work performed in respect of such Deliverables has been completed in accordance with Exhibit A (Statement of Work) and/or any applicable Work Order. Approval and signatures of both County's Project Director and County's Project Manager constitute acceptance of the Deliverables listed below.

Deliverable Number (including all work set forth in the Statement of Work and all Work Orders)	Deliverable Title	Task / Deliverable Summary of Work Completed
Comments:		
Attached hereto is a copy of all supporting Documentation required pursuant to the Agreement and Exhibit A (Statement of Work), including any additional Documentation reasonably requested by County.		
County Acceptance:		
<i>County's Project Manager</i>	<i>Signature</i>	<i>Date</i>
Comments:		
<i>County's Project Director</i>	<i>Signature</i>	<i>Date</i>
Comments:		

Distribution: Original – DHS [Financial Services]
Copy 1 – Contractor
Copy 2 – County's Project Director

Copy 3 – County's Project Manager
Copy 4 – DHS [Master Contract File]

SCHEDULE B.1

COUNTY REMOTE ACCESS POLICY FOR OUTPATIENT PHARMACY INFORMATION SYSTEM (OPIS)

APRIL 2013

This Schedule B.1 (County Remote Access Policy) sets forth the policies and procedures for Contractor's remote access to County's network.

1. PURPOSE

The purpose of this policy is to define standards for connecting to any DHS network from any host. These standards are designed to minimize the potential exposure to DHS from damages that may result from unauthorized use of a vendor's resources. Damages include the loss of sensitive or company confidential data, intellectual property, damage to public image, or damage to critical DHS internal systems.

2. POLICY

The computer systems, networks and data repositories of County's Department of Health Services' networks are critical resources and must be protected against unauthorized and/or malicious access. Authorized users of DHS computer systems, networks and data repositories may be permitted to remotely connect to those systems, networks and data repositories for the conduct of DHS-related business only through secure, authenticated and carefully managed access methods.

It is the responsibility of County approved vendors and their employees, contractors and agents with remote access privileges to any DHS networks to ensure that their remote access connection to any of our applications is given the same consideration as the user's on-site connection.

Secure remote access must be strictly controlled. Control will be enforced via RSA™ one-time password tokens that will be assigned accordingly. At no time should any outside vendor provide their token, login or password to anyone.

County approved vendors and their employees, contractors and agents with remote access privileges must ensure at their vendor-owned personal computer or workstation, which is remotely connected to any DPSS network, is not connected to any other network at the same time.

All remote vendor or business partner connections to the DHS network must be secured with industry standard encryption (e.g., SSL, SSH, IPSEC, etc.) and authentication mechanisms. Connections should be restricted by IP address and service (port). Back-end systems that are accessed through remote connections must be properly secured (locked down to the extent possible) to ensure other portions of the DHS network cannot be accessed from those devices.

The remote connections and related activities must be auditable and reviewed for appropriateness on a regular basis by the responsible DHS system administrator(s). Remote connection audit logs must be retained for at least one year.

All hosts, including personal computers, connected to any DHS internal networks via remote access technologies must use the most up-to-date anti-virus/anti-spyware software as determined by DHS Information Technologies (DHS/IT).

Personal equipment used to connect to any DHS network must meet all DHS remote access requirements.

Cross References: Board of Supervisors Policy 6.101, Use of County Information and Technology Resources.

SCHEDULE C.1

**OPTIONAL WORK SCHEDULE
FOR
OUTPATIENT PHARMACY INFORMATION SYSTEM
(OPIS)**

APRIL 2013

SCHEDULE C.1 – OPTIONAL WORK SCHEDULE

This Schedule C.1 shall document and track expenditure of all Pool Dollars for Optional Work, including Optional System Work and any Professional Services, during the term of the Agreement.

1. OPTIONAL WORK

ITEM No.	DESCRIPTION / TYPE	REQUEST DATE	DELIVERY DATE	COUNTY APPROVAL DATE	MAXIMUM FIXED PRICE
	SUBTOTAL (items completed & approved by County)				\$

Professional Services shall be provided by Contractor to County at the Fixed Hourly Rate of \$150 per hour, which shall not increase during the term of the Agreement.

2. POOL DOLLARS

EVENT (Effective Date, Change Notice, Amendment)	EVENT DATE	ADJUSTED AMOUNT ("+", "-")	REMAINING AMOUNT
Effective Date			\$0.00